

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2017

CORAM

THE HON'BLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP.PD.No.4174 of 2017 and
CMP.No.19551 of 2017

Planaisamy(deceased)

1.Sathishkumar

2.Naachammal

..Petitioners

Vs.

1.S.Mohan Prabhu

2.K.Nachimuthu

3.P.Darmaraj

4.Karuppathal

5.Sivakami

6.Vatchalamani

7.Kannan

8.S.A.Velusamy

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 Constitution of India to set aside the fair and decreetal order passed in I.A.No.890/2015 in O.S.No.52/2015 by the II-Additional District & Sessions Judge, Tirupur on 09.08.2017.

For petitioners : Mr.V.Vijayakumar

For RR1 to 3 : K.Myilsamy

ORDER

The respondents herein have filed a suit in OS.No.52 of 2015 before the II Additional District and Sessions Court, Tiruppur for specific performance. In the aforesaid suit, the revision petitioners have filed an application in IA.No.890 of 2015 under Order 7 Rule 11 of the Civil Procedure Code, which was dismissed. According to the revision petitioners, the aforesaid suit is filed on the basis of unregistered sale agreement entered into between the defendants 1 to 3 and the sixth defendant / respondents to 4 to 6 and 7th respondent herein. The deceased fourth defendant and fifth defendant have executed a will in favour of the sixth defendant. Subsequently, the sixth defendant has made over the property in favour of the plaintiffs. The contention of the petitioners is that the defendants / petitioners herein are not parties to the said sale agreement dated 13.07.2012, based on which the plaintiffs are claiming relief against the revision petitioners have filed the present suit. Therefore, under Order 7 Rule 11 of the Civil Procedure Code the suit is liable to be rejected. Hence, the order of the court below is liable to be set aside.

2. Per contra, the learned counsel for the respondents

would submit that it is an admitted fact that the petitioners have executed the sale agreement in favour of the sixth defendant and the sixth defendant has also made over the property in favour of the plaintiffs. Whether the sixth defendant is deemed to execute the made over the property in favour of the plaintiffs has to be decided at the time of trial. Therefore, provisions under Order 7 Rule 11 of the Civil Procedure Code would not attract to reject the plaint. The court below has rightly dismissed the said application. Therefore, there is no warrants to interfere with the order passed by the court below.

3. Considered, the submissions made by the learned counsel for the parties and perused the materials available on record.

4. It is an admitted fact that the deceased fourth defendant has executed the sale agreement in favour of the sixth defendant and the sixth defendant has made over the property in favour of the plaintiffs. The learned counsel for the petitioners contended that the property made over by the sixth defendant in favour of the plaintiffs is illegal and the same is without consent of the deceased fourth defendant.

5. In such circumstances, whether Order 7 Rule 11 of the Civil Procedure Code would apply to the facts of the case or not has to be decided in the present Civil Revision Petition. It is useful to extract the provisions under Order 7 Rule 11 of the Civil Procedure Code, which reads as follows.

"Rejection of plaint – The plaint shall be rejected in the following cases:-

a) where it does not disclose a cause of action.

b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

d) where the suit appears from the statement in the plaint to be barred by any law.

(Provided that the time fixed by the Court for the correction of the valuation or supplying the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff)."

6. The main contention of the revision petitioner, when the sale deed was executed after the partition cum release deed was executed, the plaintiff cannot file a suit for specific performance without praying for declaration declaring that the partition cum release deed dated 20.09.2013 as null and void. But, the court below has dismissed the instant application by clearly observing that the further sale agreement dated 31.07.2012 was extended further could be decided only at the time of trial. The grounds raised in the application has to be decided after adducing the oral and documentary evidence by both parties. Therefore, there is no warrants to interfere with the order passed by the court below and

hence, the Civil Revision Petition is liable to be dismissed.

7. At this stage, the learned counsel for the revision petitioners requests, this Court may observe that the above issue can be raised at the time of trial.

8. On request of the both counsel, the trial court is directed to frame the issue raised in application, in the suit, and to decide the same in accordance with law.

9. The Civil Revision Petition is dismissed with above observations. Consequently, the connected miscellaneous petition is closed. No costs.

16.11.2017

Speaking/Non-speaking order

Index : Yes/No

Internet: Yes/No

lok

WEB COPY

To

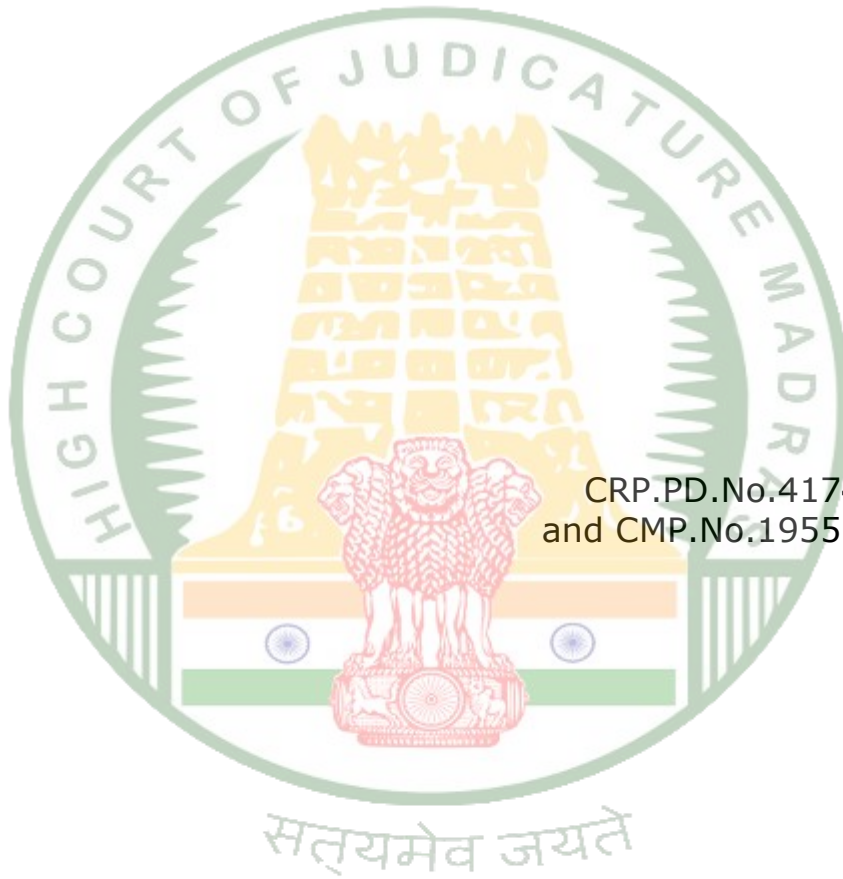
The II-Additional District & Sessions Judge,
Tirupur



WEB COPY

D.KRISHNAKUMAR. J,

lok



CRP.PD.No.4174 of 2017
and CMP.No.19551 of 2017

WEB COPY

16.11.2017