

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2017

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

**C.R.P. PD No.4095 of 2012
& M.P.No.1 of 2012**

1.S.Sambandam
2.S.Gowri

...

Petitioners

Vs

1.V.Manivannan
2.V.Jeganathan

...

Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order passed by the learned IV Additional Judge, City Civil Court in I.A.No.6854 of 2011 in O.S.No.9527 of 2010 and dated 2nd day of July 2012.

For Petitioners : Mr.K.Thangavel

For respondents : Mr.P.Wilson Topaz
for M/s.A.S.Kailasam & Associates

ORDER

This Civil Revision Petition is filed to set aside the order passed by the learned IV Additional Judge, City Civil Court in I.A.No.6854 of 2011 in O.S.No.9527 of 2010 and dated 2nd day of July 2012.

2. The petitioners are the defendants 1 & 2 and the respondents are the plaintiffs. The respondents filed suit for declaration that sale deed executed in favour of the first petitioner by the defendants 3 & 4 alongwith the wife of the 4th defendant in respect of "A" Schedule property as null and void and not binding on the respondents and for permanent injunction restraining the petitioners from dispossessing the defendants 3 & 4 from the "A" schedule suit property and for declaration that the respondents are the owners of the "B" Schedule property.

3. The petitioners filed I.A.No.6854 of 2011 under Order VII Rule 11 (d) CPC for rejection of the plaint on the ground that there is no cause of action for the suit against the petitioners. According to the petitioners, they have purchased flat bearing No.G-5, Door No.35, New No.85, Navin Kailash, No.111 Kodambakkam Village together with undivided share of land from the defendants 3 & 4 who are the brother-in-law and father-in-law of the first petitioner by the deed of sale deed dated 18.01.2002 bearing Doc.No.85 of 2002 registered on the file of Sub Registrar, Ashok Nagar, Chennai. The petitioners were put in possession of the suit property by the vendors namely defendants 3 & 4 and the first petitioner occupied the flat and

petitioners and their children are residing there. The respondents, after receiving the proportionate sale consideration in the larger extent, have no right, title or interest in the suit property and they have no right to question the right of the 3rd defendant to deal with the flat which he purchased. The respondents are third parties to the document and they have no right to question the sale deeds. There is no cause of action for the suit and prayed for rejection of the plaint.

4. The respondents filed counter affidavit and denied all the averments in the affidavit and submitted that respondents are brothers of 3rd defendant and sons of 4th defendant, 2nd petitioner is the sister of respondents and first petitioner is the husband of second petitioner and the brother-in-law of the respondents. The 3rd defendant is a mentally ill person and first petitioner, without paying the sale consideration, got the sale deed executed in his favour by defendants 3 & 4 and wife of the 4th defendant, promising to maintain them till their life time. The respondents are owners of the flat mentioned in "B" Schedule property and prayed for dismissal of the application.

5. The learned Judge, considering the averments in the plaint, especially cause of action portion, affidavit and counter affidavit,

dismissed the application holding that the plaint discloses cause of action.

6. Against the said order dated 02.07.2012 made in I.A.No.6854 of 2011 in O.S.No.9527 of 2010, the present Civil Revision Petition has been filed.

7. Heard the learned counsel for the petitioners as well as respondents and perused the materials available on record.

8. The contention of the learned counsel for the petitioners that respondents have no right or locus standi to challenge the sale deed executed by the defendants 3 and 4 and plaint does not disclose any cause of action. Both the contentions are contrary to the facts. The respondents are brothers of 3rd defendant. According to the respondents, the first petitioner, without paying any sale consideration, got the sale deed executed in his favour on the promise that he would look after the defendants 3 & 4 and wife of the 4th defendant till their life time and promised that he will not dispossess the defendants 3 & 4 from the suit property. According to the respondents, the petitioners are not looking after the defendants 3 & 4 and are trying to dispossess

them from the suit property. They also claim that they are the owners of the "B" Schedule property.

9. A reading of the plaint shows that the respondents have made averments with regard to the relief sought for and cause of action in the suit. It is well settled that while considering the application filed under Order VII Rule 11 CPC, the averments in the plaint are the only consideration to decide the issue in the suit. A reading of the plaint reveals cause of action for the suit and the learned Judge has extracted the cause of action from the plaint in the impugned order and dismissed the application filed by the petitioners. There is no irregularity or illegality in the impugned order warranting interference by this Court.

10. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

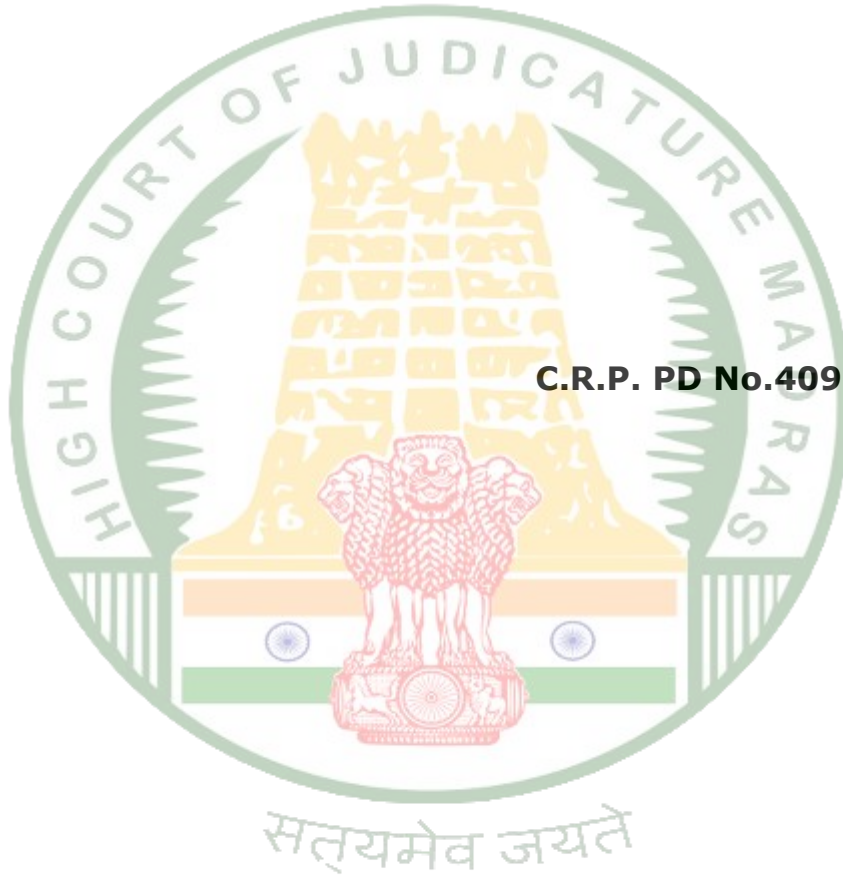
Index : Yes/No
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To

The IV Additional Judge, City Civil Court, Chennai.

V.M.VELUMANI, J.

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