

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 2935 of 2017

ORDER:

1) Assailing the order dated 23.03.2017, passed in I.A.No.125 of 2016 in O.S.No.85 of 2015 on the file of the IX Additional District Judge, Chittoor, wherein an application filed under Order VII Rule 10 read with Section 21 of C.P.C., requesting the Court to decide that it has no territorial jurisdiction to try the suit, as a preliminary issue, was rejected, the present Civil Revision Petition is filed under Article 227 of the Constitution of India.

2) The facts in issue are as under:

The respondent herein filed a suit against the petitioner herein seeking a direction to the defendant to refund the advance amount of Rs.60,00,000/- with interest at 24%p.a. from the date of suit till the date of realization with future interest, basing on the agreement of sale dated 20.08.2012. The written statement filed by the petitioner on 31.12.2015 disputes the averments made in the plaint. Pending trial, the petitioner filed I.A.No.125 of 2016, requesting the Court to decide that the said Court has no territorial jurisdiction to deal with the case, as a preliminary issue, before deciding the other issues and to return the plaint to be presented before the proper Court,. It is pleaded that as the non-judicial stamps used by the plaintiff for the alleged agreement of sale are printed and sold by Karnataka Government; (2) the subject property is also situated at Attur Village,

Hoskote Taluq, Bangalore Rural District in Karnataka State; (3) cash receipt dated 20.08.2012 was also printed and sold by Karnataka Government, and (4) as no transaction took place between the plaintiff and defendant at Chittoor, ie. within the territorial jurisdiction of the Court pleads that the Court at Chittoor has no territorial jurisdiction to try the suit. It is also alleged that the agreement of sale, cash receipt are all forged and fabricated.

3) A counter came to be filed by the plaintiff stating that with a view to avoid refund of the money, the defendant has set up a false and frivolous plea. It is also stated that on 08.08.2012, the defendant himself purchased the stamp for scribing the agreement of sale and brought the said stamp to Chittoor for execution of the sale agreement. The petitioner received the advance amount and executed the sale agreement in the house of the respondent/ plaintiff at Chittoor. It is also stated that the suit is filed for refund of advance amount with interest and not for specific performance of the contract.

4) After analyzing the material on record, the trial Court dismissed the petition. Challenging the same the present revision is filed.

5) Learned counsel for the petitioner would submit that the suit is filed basing on an agreement of sale dated 22.08.2012. The said agreement of sale was reduced into writing on the stamp papers purchased at Bangalore and the schedule property also situated within the jurisdiction of Bangalore and not at Chittoor, as such the

Courts at Chittoor are not having any jurisdiction to try the suit. Learned counsel for the petitioner relies upon a judgment of the Apex Court in *Harshad Chiman Lal Modi v. DLF Universal Limited and another*¹ in support of his plea.

6) Learned counsel for the respondent/ plaintiff would submit that the suit is filed only for refund of the advance amount paid by the plaintiff to the defendant and not for specific performance of contract. Apart from that, it is pleaded that the agreement of sale was executed by the defendant in the house of the respondent situated at Chittoor, as such, the trial Court gets jurisdiction to try the suit. In support of his plea, learned counsel for the respondent relied upon a judgment of this Court in *Gedela Lalitha Kumari v. Bonumahanthi Neelakantham and others*²

7) Before proceeding further, it would be useful to refer to the contents of the plaint.

8) Admittedly, the suit was filed for recovery of Rs.60,00,000/- with interest basing on the agreement of sale and the cash receipt. The contents of the suit document would show that the petitioner agreed to sell the property to the respondent for a sum of Rs.80,00,000/- and received an advance amount of Rs.60,00,000/-. He further agreed to execute a regular sale deed in favour of the respondent as and when called for by receiving the balance sale consideration of Rs.20,00,000/-. The document further shows that

¹ (2005) 7 SCC 791

² (2004) 2 ALD 315

till that date the petitioner has not encumbered the said property in favour of third parties and it is free from all encumbrances except the outstanding agricultural loan with SCF S.C.B. of Zodiganahalli Branch, Bangalore.

9) It is to be noted here that the petitioner offered to sell the joint family property situated at Atturu Village, Bangalore District, for a sum of Rs.80,00,000/- and the respondent accepted the said Offer. Accordingly, the petitioner purchased a non-judicial stamp at Karnataka and an agreement of sale was executed by the petitioner in favour of the respondent by receiving advance amount of Rs.60,00,000/-. A separate receipt was also issued by the petitioner in favour of the respondent. Later the petitioner is alleged to have postponed the execution of regular registered sale deed by receiving the balance sale consideration. Enquiries made by the respondent revealed that the petitioner has already executed a registered sale agreement in favour of one A.C.Narayana Swamy. Hence, the respondent issued legal notice on 06.08.2015, calling upon the petitioner to refund the earnest money of Rs.60,00,000/- with interest at 24%p.a., as the petitioner failed to perform his part of contract by canceling the registered sale document executed in the name of A.C.Narayana Swamy.

10) Admittedly, the property is situated outside the territorial jurisdiction of the Court, but it is to be noted that the respondent is not intending for enforcement of the agreement of sale. He claims only for refund of the advance amount paid by him along with

interest. The said claim has nothing to do with the right of the petitioner over the property. Apart from that it is alleged that the said document was executed in the house of the plaintiff at Chittoor though the property which he intended to purchase is at Bangalore. Hence, I see no merits in the revision.

11) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

12) As a sequel thereto, Miscellaneous Petitions pending if any in this Civil Revision Petition, shall stand closed.

07.09.2017
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C. PRAVEEN KUMAR, J