

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.04.2018

Coram:

THE HONOURABLE **MR.JUSTICE P.VELMURUGAN**

C.R.P.(PD)No.1346 of 2018 and
CMP.No.7066 of 2018

Fernatsha @ Ramachandran

... Petitioner

Vs.

1. Parthasarathi @ Nammalwar

2. M/s.Ruby Builders

Prop. S.Kumudha

No.47, Selvam Nagar, 6th Cross Street,

Ponnammanmedu, Chennai-600 110.

... Respondents

Civil Revision Petition has been filed under Article 227 of the Constitution of India challenging the fair and decreetal order passed in I.A.No.8763 of 2016 in O.S.No.4270 of 2015 dated 23.01.2018 by the learned III Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr.T.S.Rajamohan

ORDER

The civil revision petition has been filed against the fair and decreetal order passed in I.A.No.8763 of 2016 in O.S.No.4270 of 2015 dated 23.01.2018 by the learned III Additional Judge, City Civil Court, Chennai.

2 The first respondent filed a suit against the revision petitioner and second respondent in O.S.No.4270 of 2015 for partition and separate possession. In the said suit, the revision petitioner filed an interlocutory application in I.A.No.8763 of 2016 under Order 7 Rule 11 seeking to reject the plaint on the ground that the first respondent/plaintiff suppressed the material facts. The first respondent/plaintiff opposed the said application by filing his counter and contested the case.

3 After hearing the arguments advanced on either side, the trial Court dismissed the application in I.A.No.8763 of 2016 in O.S.No.4270 of 2015, by an order dated 23.01.2018, by observing that suppression of material fact is not the ground to reject the plaint.

4 Aggrieved against the said order dated 23.01.2018, the petitioner/1st defendant has come forward with the present civil revision petition.

5 Heard the learned counsel appearing for the revision petitioner and perused the materials available on record.

6 The main contention raised by the revision petitioner is that the first respondent along with his mother executed a release deed in favour of mother of the revision petitioner namely Komalavalli. The said Komalavalli died on 19.04.2001, leaving behind her husband Amaresan and son Ramachandran who is the revision petitioner and mother Nagavalliammal. Later the said Nagavalliammal and Amaresan executed a deed of release dated 18.06.2008 releasing their 1/3rd share each in respect of the suit property in favour of the revision petitioner. Subsequently the revision petitioner has taken possession and now entered into an agreement with the second respondent for developing the suit property. At this stage, the first respondent/plaintiff filed a suit against the revision petitioner for the relief of partition and separate possession, suppressing the material fact that he and his mother have given up their right over the suit property vide release deed dated 03.12.1992. When the plaintiff himself given up his right by the release deed in the year 1992 itself,

the present suit for partition and separate possession is not maintainable and liable to rejected.

7 It is a well settled principle that, while considering the application under Order VII Rule 11, to reject the plaint, the court has to look into the averments made in the plaint and the documents annexed with and dispose of the application in accordance with law. Further at the time of deciding the application of this nature, the defence taken by the defendant and documents produced by the defendant for supporting his defence need not be considered. In the present case on hand, the first respondent/plaintiff disclosed the cause of action and correctly valued the suit and paid the court fee. This Court finds no reason to reject the plaint and the trial Court has rightly observed that suppression of material fact is not the ground to reject the plaint. The revision petitioner has not made out any ground to reject the plaint. Further this Court finds no illegality or infirmity in the order dated 23.01.2018 in I.A.No.8763 of 2016 passed by the trial Court.

9 However, since the suit is in the year 2015 and also the revision petitioner has taken a stand that the second respondent has

stopped the development work in the suit property and that the revision petitioner is suffered financially, the trial Court is directed to dispose of the suit in O.S.No.4270 of 2015 within a period of six months from the date of receipt of a copy of this order and it is made clear that the trial court while disposing the suit, shall not make any influence on the observations made in the order in I.A.No.8763 of 2016 and in the present civil revision petition.

10 In the result the civil revision petition is dismissed. Consequently connected miscellaneous petition is dismissed. No costs.

11.04.2018

Index:Yes/No

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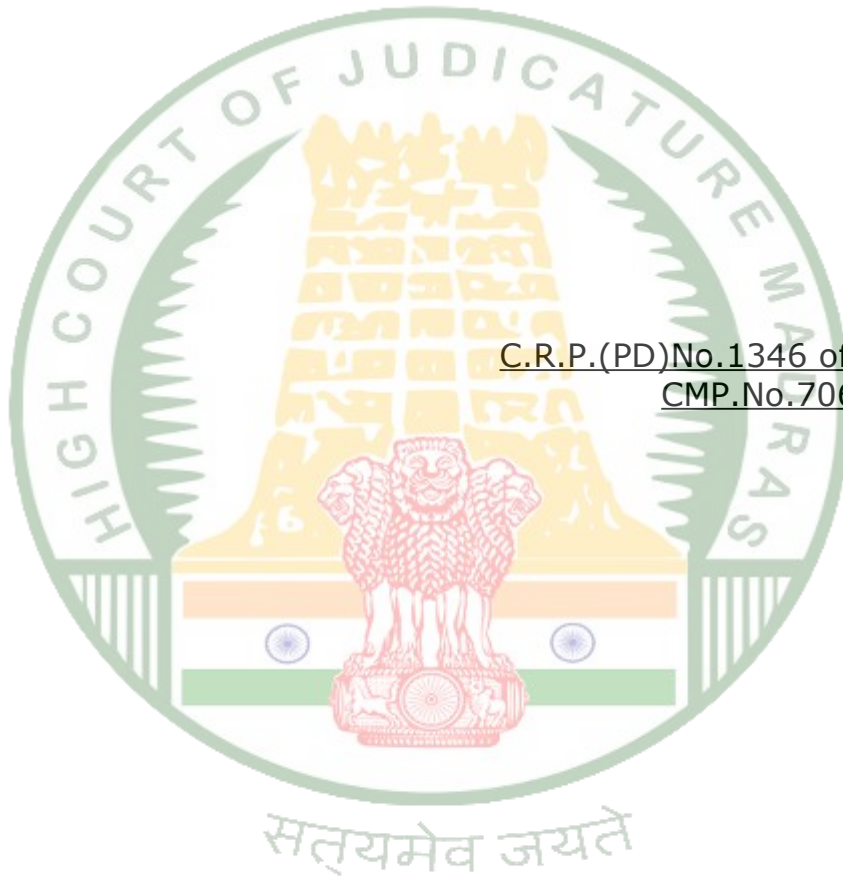
To

The III Additional Judge,
City Civil Court, Chennai.

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P.VELMURUGAN, J.,

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