

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

C.R.P.(PD).No.4713 of 2017

and

C.M.P.No.22165 of 2017

Gandhi Nagar Co-operative House
Construction Society Ltd.,
rep.by its President,
No.79, 4th Main Road, Gandhi Nagar,
Adyar, Chennai 600 020.

.. Petitioner

Vs.

1.Jacob Andrews Chakramakal
2.Thomas Adreus Chakramakal
3.Mathew Jacob Chakramakal
@ Mathesh @ Thomsas Jacob Chakramakal

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 29.11.2017 passed in I.A.No.13721 of 2017 in O.S.No.3153 of 2017 on the file of XIII Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr. S.P.Sudalaiyandi

ORDER

This Civil Revision Petition is filed against the order of the learned
XIII Assistant Judge, City Civil Court, Chennai dismissing the petition filed by

the defendant/petitioner herein under Order VII Rule 11 C.P.C. to reject the plaint in O.S.No.3153 of 2017.

2. According to the petitioner, respondents 1 and 2/plaintiffs have filed a suit in C.S.No.458 of 2014 before this Court against the petitioner as well as the second respondent herein for judgment and decree directing the defendants jointly and severally to pay a sum of Rs.25,22,000/- with interest at the rate of 24% p.a. from the date of plaint till the date of realisation and for costs. In the aforesaid suit, respondents 1 and 2 and the petitioner herein entered into a compromise and recording the joint memo of compromise dated 29.02.2016 in Diary No.8160 of 2016, decree has been passed. The petitioner has filed an application in I.A.No.13721 of 2017 in the present suit in O.S.No.3153 of 2017 on the file of the learned XIII Assistant Judge, City Civil Court, Chennai, to reject the plaint and the same was dismissed. Hence, the petitioner has filed the present civil revision petition before this Court.

3. The learned counsel for the petitioner would submit that the petitioner has filed the aforesaid application to reject the plaint on the ground that the respondent herein filed a suit in C.S.No.458 of 2014 and on the terms of the memo of compromise, decree has been passed. Therefore, the present suit filed by the respondent is abuse of process of Court as well as the suit is not maintainable before the XIII Assistant Judge, City Civil Court, Chennai.

4 According to the counsel for the petitioner, the terms and conditions of the compromise decree is very clear and therefore, the petitioner is seeking only remedy before this court for getting appropriate orders. Therefore, the present suit filed by the respondent is without jurisdiction and the same is not maintainable.

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

6. The instant application has been filed by the petitioner on the ground that the Court below has no jurisdiction to entertain the suit for the reason that the respondents 1 and 2 /plaintiffs have already filed a suit in C.S.No.458 of 2014 before this Court. In the aforesaid suit, the compromise memo has been filed by the parties and recording the compromise memo, the decree was passed. Therefore, the present suit is not maintainable.

7. On perusal of the counter statement filed by the respondents 1 and 2 herein, it shows that the petitioner's society was not a party to the Memo of Compromise and in the earlier decree passed in C.S.No.458 of 2014. At that time, the petitioner society never refused to execute the sale deed and the respondents 1 and 2 herein never sought any relief against the petitioner

society in the suit in C.S.No.458 of 2014. On the basis of the decree, the petitioner society did not execute the sale deed and the petitioner Society has insisted for production of Succession Certificate. Since the petitioner refused to execute sale deed, the present suit has been filed with new cause of action before the trial Court.

8. According to the respondents 1 and 2, it is specifically stated in the counter statement, in which, it is stated that the present suit has been filed by the respondents for mandatory injunction directing the petitioner herein to execute and register the sale deed in respect of the suit property in favour of the respondents herein. Therefore, there is no suppression of material facts or abuse of process of Court in the present suit. Therefore, the trial Court has rightly dismissed the application filed by the petitioner without considering the compromise decree passed by this Court and the issue involved in this case has to be determined only at the appropriate stage.

9. In *Surjit Kaur Gill & another vs. Adarsh Kaur Gill & another* [(2014) 2 LW 915], the Hon'ble Supreme Court has held as follows:

“For deciding an application under Order VII Rule 11 C.P.C., one has to look at the plaint and decide whether it deserved to be rejected for the ground raised” .

10. In the light of the decision of the Hon'ble Supreme Court cited supra and considering the submissions made by the learned counsel for the petitioner that the petitioner society has insisting upon the production of Succession Certificate for execution of the sale deed, the present suit filed by the respondents 1 and 2 to execute the sale deed in favour of the plaintiffs without insisting for the succession certificate from the respondents is maintainable. The cause of action in the present also shows that the petitioner society insisting upon the succession certificate for execution of sale deed. The said factum is not a subject matter of the earlier suit filed by the respondents 1 and 2 herein and also not a subject matter of the terms and conditions of the compromise memo.

11. Therefore, at this stage, this Court cannot go into the merits of the case, whether the succession certificate insisted by the petitioner society is valid in law or not, shall be decided at the time of trial of the suit. Therefore, there is no error or illegality in the order passed by the court below and hence, this Court is not inclined to interfere with the order of the court below.

12. Accordingly, this civil revision petition fails and the same is dismissed. The learned XIII Assistant Judge, City Civil Court, Chennai, is

D.KRISHNAKUMAR, J.

kkd/vaan

directed to dispose of the suit in O.S.No.3153 of 2017, on merit and in accordance with law, as expeditiously as possible, without being influenced by any of the observations made in this order. No costs. Consequently, connected miscellaneous petition is closed.

09.01.2018

Index: Yes/No
Speaking Order/Non Speaking Order
kkd/vaan
To
The XIII Additional Judge, City Civil Court, Chennai.

C.R.P.(PD).No.4713 of 2017
and C.M.P.No.22165 of 2017

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