

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRP.P.D.No.3941 of 2017

and

CMP.No.5773 of 2018

1.M/s.Deccan Estate Limited,
Rep.by its Manager,
Deccan Chambers,
No.24, Dr.B.N.Reddy Road,
T.Nagar, Chennai 600 017.

2.M/s.R.R.Housing India Pvt.Ltd.,
Represented by its Manager,
No.2, 6th Street, VNR Nagar,
Vadavalli, Coimbatore 641 041.

3.Pappathal

4.Velusamy

5.Sundar

.. Petitioners

Vs

N.H.Venkataraman

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 13.09.2017 made in I.A.No.1082 of 2017 in O.S.No.1002 of 2017 on the file of the III Additional District Munsif Court, Coimbatore.

For Petitioners : M/s.M.Muthappan

For Respondent : Mr.R.Kannan

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 13.09.2017 passed in I.A.No.1082 of 2017 in O.S.No.1002 of 2017 on the file of the III Additional District Munsif Court, Coimbatore.

2. The defendants 1 to 5 in O.S.No.1002 of 2017 on the file of the III Additional District Munsif Court, Coimbatore, are the revision petitioners herein.

3. According to the petitioners, the respondent had filed a suit in O.S.No.1002 of 2017 seeking declaration and permanent injunction against the petitioners and others. The petitioners had entered appearance in the suit. In the aforesaid suit, the petitioners filed an application in I.A.No.1082 of 2017 in O.S.No.1002 of 2017 for rejecting the plaint on the ground that the suit is barred by law under Section 101 of Tamil Nadu Town and Country Planning Act, 1971. After the trial, the trial Court has failed to consider the fact that the respondent was not a party for getting a revised plan, without giving notice to the respondent under Sections 56 or 57 of the Tamil Nadu Town and Country Planning Act dismissed the application. Aggrieved by the said order, the petitioners have filed the present civil revision petition before this Court.

4. The learned counsel for the petitioners would contend that the suit is barred by the legal provisions under Section 101 of the Tamil Nadu Town and Country Planning Act. Therefore, the impugned order is liable to be set aside.

5. The learned counsel for the respondent would contend that the respondent is not a party to the proceedings and also no notice was given to the respondent. Therefore, he prays for dismissal of this petition.

6. Heard the learned counsel on either side and perused the materials available on record.

7. On a perusal of the records would go to show that the respondent had filed the suit against the petitioners and others and admitted fact are that the respondent purchased the portion of the property from the petitioners and also the petitioners got rectification of the plan, subsequent to the purchase of the property. Admittedly, no notice was given to the respondent either by the petitioners or by the authority.

8. So far as contention regarding non-disclosure of cause of action in the plaint or suit is barred by law is concerned, a perusal of the entire plaint reveals that it discloses cause of action and that the suit is not barred by provision of any law. The provisions of Section 101 of the Tamil Nadu Town

and Country Planning Act, is not made applicable to the facts of the present case on hand, since the respondent was not applicant for getting a revised plan other words he is not a party to the application made for getting revised plan. It is well settled proposition that at the time of deciding any application under Order VII Rule 11 of C.P.C. the Court has to look into the averment of the plaint and documents filed by the plaintiff thereon and not the defence taken by the defendant and documents relied on by the defendant. There is no illegality or infirmity in the impugned order passed by the trial Court.

9. Considering the facts and circumstances of the case, the impugned order passed in I.A.No.1082 of 2017 in O.S.No.1002 of 2017 on the file of the III Additional District Munsif Court, Coimbatore dated 13.09.2017 is hereby confirmed. Hence, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

10.04.2018

Index:Yes/No

Internet : yes/No

Speaking order / Non speaking order

kkd

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P.VELMURUGAN,J.

kkd

To
The III Additional District Munsif Court,
Coimbatore.



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