



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 11.09.2017
DELIVERED ON: 06.02.2018

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.772 of 2017
and
C.M.P(MD)No.8331 of 2017

1.T.Regina Mary

2.T.Francis Santhoseh

3.J.Rubi Christina ... Appellants/Respondents/Defendants

Vs.

S.Kathirvel ... Respondent/Petitioner/Plaintiff

PRAYER:- Civil Miscellaneous Appeal filed under Order 43 Rule 1(q) of C.P.C., to set aside the order passed in I.A.No.217 of 2017 dated 05.07.2017 in O.S.No.84 of 2017 by the I Additional District Judge, Tiruchirappalli by allowing this Civil Miscellaneous Appeal and to dismissing the I.A.No.217 of 2017 dated 05.07.2017 in O.S.No.84 of 2017 on the file of the I Additional District Judge, Tiruchirappalli.

For Appellants :Mr.R.S.Sivaram

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants to set aside the order passed in I.A.No.217 of 2017 in O.S.No.84 of 2017 by the I Additional District Judge, Tiruchirappalli.

2.The brief facts of the case are as follows:

(i) The appellants are the defendants in O.S.No.84 of 2017 filed by the respondent/plaintiff, praying for a direction to the defendants to pay a sum of Rs.14,05,000/- along with interest and for declaration, declaring that the police complaint dated 20.04.2016 given by the 2nd defendant to the fourth defendant and the consequential 'Non-Traceable Certificate' issued by the fourth respondent, as a forged and fabricated one and has no legal effect and for consequential reliefs.

(ii) It is alleged in the plaint that the plaintiff entered into an unregistered 'Agreement of Sale' (hereinafter called as 'AFS') on 15.10.2015, with the defendants for the purchase of Plot Nos.5A, 6A, 19A, 20A & 21A, comprised in S.F.No.303/1 in 'Nova Nagar Extension', Kezhakuruchi Village, Thiruverambur Taluk, Thiruverambur SRO, Trichy District, for a sum of Rs.15 lakhs. Subsequent to that, he made payment as follows:

Sl.No	Date	Payment	Amount
1.	15.10.2015	Plaintiff on the date of AFS, paid a sum of Rs.1,00,000/- and further sum of Rs.10,000/- through Indian Bank, Golden Rock Branch, Ponmalaipatty, Trichy in Cheque Nos.514119 & 514120 respectively in favour of the second defendant	Rs.1,10,000/-
2.	24.10.2015	Plaintiff paid a sum of Rs.5,55,000/- by cash to the 2 nd defendant	Rs.5,55,000/-
3.	09.11.2015	Plaintiff paid a sum of Rs.7,00,000/- by cash to the 2 nd defendant	Rs.7,00,000/-
4.		Plaintiff spent a sum of Rs.40,000/- for the purchase of the Stamp papers for registration of the plots as agreed by the defendants for registration on 30.11.2015	Rs.40,000/-
		Total	Rs.14,05,000/-

But, the defendants cheated the plaintiff by refusing to register necessary sale deed in favour of the plaintiff.

(iii) The plaintiff along with the suit filed an interim application in I.A.No.217 of 2017, to pass an order of attachment of the property before judgment. In the said application, the Court below passed an order directing the defendants to furnish security for the suit claim. As the defendants failed to furnish security, an order of attachment was passed on 05.07.2017.

3. Challenging the order passed by the Court below, the appellants/defendants have filed the present appeal.

4. The learned counsel appearing for the appellants/defendants submitted that the Court below failed to note that the agreement of sale is a forged one and the appellants neither entered into an agreement of sale with the respondent/plaintiff nor received any amount from him at any point of time. He further submitted that the



alleged agreement of sale is an unregistered one and the same is not legally valid and it did not confer any right to the respondent/plaintiff.

5. The learned counsel appearing for the appellants would further submit that the sale deed was lost and the police had also given a 'Non-Traceable Certificate' and a paper publication to that effect was issued and the same was also admitted in the plaint itself.

6. It is the further submission of the learned counsel for the appellants/defendants that before the Court below, though the appellants filed their counter affidavit stating that security need not be furnished, the Court below proceeded to pass an order of attachment on 19.06.2017 on the ground that the conditional order was not complied with by the appellants/respondents, which is quite illegal and unsustainable and therefore, prays for setting aside the order of attachment passed by the Court below.

7. Heard the submissions made by the learned counsel appearing for the appellants and perused the materials available on record.

8. Perusal of the records shows that the respondent/plaintiff has paid the suit amount to the appellants/defendants, through cheque and cash on various dates, based on the unregistered sale agreement and the original document had been handed over to the respondent on receipt of amount and now, the appellants are trying to sell the property based on a police complaint filed stating that the original document is missing.

9. Further, perusal of the records shows that the Court below has passed an order directing the appellants to furnish security for the suit claim on or before 16.06.2017 and on failure of the conditional order only, the attachment order was passed.

10. Whether the sale agreement has been entered into between the appellants and the respondent and whether the amount has been paid can be decided only after adducing evidence and based on the contention of the respondent/plaintiff that the appellants/defendants are trying to alienate the property, attachment order was passed by the Court below. Therefore, in my considered view, there is no infirmity in the order passed by the Court below.

11. In the result, this Civil Miscellaneous Appeal is dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AD-II)

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<https://hcservices.ecourts.gov.in/hcservices/>

Sub Assistant Registrar



To

1. The I Additional District Judge,
Tiruchirappalli.

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.R.S.Sivaram, Advocate SR.No. 46396

C.M.A (MD) No. 772 of 2017
06.02.2018

pm

JM/KK/SAR 4/23.02.2018/4P/4C