



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.02.2018

CORAM:

THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

C.R.P (MD) No.2358 of 2017 (PD)

WEB COPY

Sri Arivalagan

... Petitioner/Plaintiff

Vs.

- 1.Duraisamy
- 2.Annamayil
- 3.Sitrarasan
- 4.Selvam
- 5.Krishnakumar

6. The Tahsildar,
Office of the Taluk,
Aundipatty.

7. The Sub Registrar,
Office of the Sub Registrar,
Kadamalaigundu Post,
Aundipatty,
Theni District.

8. The District Collector,
Theni District,
Theni.

... Respondents/ Defendants

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, against the rejection of plaint in the unnumbered O.S.No.--- of 2017 dated 19.09.2017 on the file of the District Munsif-cum-Judicial Magistrate Court, Aundipatti and to set aside the same.

For Petitioner

: Mr. P.Thiagarajan

For Respondents 1 to 5

: Mr.A.Arumugam

for M/s.Ajmal Associates

ORDER

This Civil Revision Petition has been filed challenging the rejection of plaint, dated 19.09.2017, passed by the learned District Munsif-cum-Judicial Magistrate Court, Aundipatti, without numbering the plaint.



2. It is seen from the records that the revision petitioner presented a plaint for the following reliefs:

a) Declare the Power Deed executed by the second defendant in favour of third defendant on 25.01.2017 is null and void.

b) Declare the sale deed executed by the third defendant in favour of defendants 4 and 5 on 04.07.2017 is null and void.

c) granting permanent injunction restraining the defendants 1 to 5, not to alienate or encumber the suit property till the disposal of the appeal.

d) granting permanent injunction restraining the defendants 6 and 7 not to alter the record, it any in the suit property till the disposal of the appeal.

e) directing the defendants to pay the costs of the suit.

But, the Trial Judge without numbering the plaint, has rejected the same holding that for the very same property, he had already filed a suit in O.S.No.127 of 2009 for specific performance and the same was dismissed, against which he has filed an appeal and the same is still pending. Aggrieved by the rejection of the plaint, this civil revision petition has been filed by the plaintiff.

2. The learned counsel appearing for the petitioner would submit that during the pendency of the appeal, the first respondent herein has executed a gift settlement deed in favour of his wife/second defendant, who, in turn, gave a Power of Attorney to the third defendant and the third defendant has sold the suit property to the defendants 4 & 5 and hence, the petitioner has filed the above plaint for the afore said reliefs.

3. The learned Counsel for the respondent would submit that the petitioner has no right or title over the property and he had only sale agreement regarding the suit property. As the suit filed for specific performance was dismissed, no cause of action arose for filing the said plaint and therefore, the learned Judge has rightly rejected the suit.

4. Considering the fact that though the suit filed for specific performance by the revision petitioner is dismissed, now it is pending in appellate stage, this Court is not inclined to discuss the matter in detail. After elaborate arguments, the learned Counsel for the respondents would fairly submit that if the revision petition succeeds in the appeal, the respondents will not claim any right over the property. The said submission is recorded.



5. Recording the above observation, this Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-I)

WEB COPY

/True Copy/

Sub Assistant Registrar

To

The District Munsif-cum-Judicial Magistrate,
Aundipatti.

+ 2 ccs TO Mr.P.Thiagarajan , Advocate in SR No. 47585,46761
+ 1 cc TO M/S.Ajmal Associates , Advocate in SR No. 47167

rm

AE/MR/SAR3/20.02.2018/3P/5C

C.R.P (MD) No.2358 of 2017 (PD)
07.02.2018