



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.02.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(PD) (MD)No.2495 of 2017

M.Elango

... Petitioner

vs.

1)Jeyalakshmi @ Pushpalatha

2)P.T.Moorthy

... Respondents

Petition filed under Article 227 of the Constitution of India, to direct the Principal Sub Judge, Dindigul, to number the unnumbered O.S. of 2017 and to decide the same on merits and in accordance with law within a time frame as fixed by this Hon'ble Court.

For Petitioner : Mr.S.A.Ajmalkhan

ORDER

This Civil Revision Petition has been filed to direct the Principal Sub Judge, Dindigul, to number the unnumbered O.S. of 2017 and to decide the same on merits and in accordance with law within a time frame to be fixed by this Court.

2.The revision petitioner is plaintiff and the respondents are defendants. It is the case of the revision petitioner that the defendants agreed to sell the suit property to him for a sum of Rs.7,00,000/- and they executed a sale agreement in the presence of witness on 02.08.2015 and in the said agreement, the time for execution of sale deed has been mentioned as six months. The defendants received Rs.6,00,000/- and delivered original sale deed dated 06.10.2008. There was mortgage created by the defendants and they promised to discharge the mortgage debt after receiving the advance amount. According to the revision petitioner, he is always ready and willing to perform his part of contract which has been clearly mentioned in the sale agreement. Thereafter, the revision petitioner sent notice dated 01.08.2017 calling upon the defendants to perform their part of contract and to execute the sale deed which was received by the defendants on 03.08.2017. Since there was no reply from the defendants, the revision petitioner has filed the suit for the following reliefs:-

(a) Directing the defendants to perform their part of



contract and to execute the sale deed in favour of the plaintiff in terms of the sale agreement dated 02.08.2015 and to register the same in the office of the Sub Registrar, Vathalakundum after discharging the mortgage loan payable to Kesavaraj as per the mortgage deed dated 11.04.2012 in Document No.2714/2012, to deliver possession of the suit properties without any let or hindrance or alternatively to direct the defendants to pay Rs.6,00,000/- with interest @ 12% per annum from the date of plaint till realisation.

(b) Restraining the defendants, their men, their servants, their agents or any other persons claiming title under them from in any way encumbering and alienating the suit properties to 3rd parties by way of sale, sale agreement, mortgage, gift, settlement, security, power of attorney and etc., by an order of permanent injunction.''

3.The Trial Court returned the plaint stating that how unregistered agreement can be accepted in a suit for specific performance. The counsel represented the plaint stating that in cases of claim of protection under section 53 ATP Act, agreement of sale is to be registered. In a bare suit for specific performance, the agreement can be received as evidence under section 49 of the Registration Act and further, relief of return of advance amount also added as alternative relief and therefore, there is no impediment to take the plaint on file. However, the Trial Court returned the plaint stating that returns are not complied with. Hence, this revision petition has been filed.

4.When the matter was taken up for hearing, learned counsel for the petitioner submitted that the revision petitioner will not press for the relief of specific performance and he would represent the plaint making the prayer for refund of the advance amount of the sale agreement with interest as main prayer within a time frame to be fixed by this Court.

5.Recording the said submission, this Civil Revision Petition is disposed of directing the revision petitioner to amend the prayer of specific performance into the refund of the advance amount of the sale agreement with interest as main prayer and represent the plaint to the the Principal Sub Court, Dindigul, forthwith. On such re-presentation, the learned Principal Sub Judge, Dindigul, is directed to number the suit and proceed in accordance with law. No costs.

Sd/-

Assistant Registrar(CS-I)

/True Copy/



To

1. The Principal Sub Judge,
Dindigul.

2. The Section Officer,
E.R Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+ 1 cc TO Mr.S.A.Ajmalkhan , Advocate in SR No. 47936

bala

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

CRP (PD) (MD) No.2495 of 2017
12.02.2018