



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.09.2018

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(PD) (MD) .No.751 of 2016 and
C.M.P. (MD) No.3660 of 2016

Rangasamy

... Petitioner/Petitioner/
Appellant

Vs.

1. Perumal
2. Nagajothi

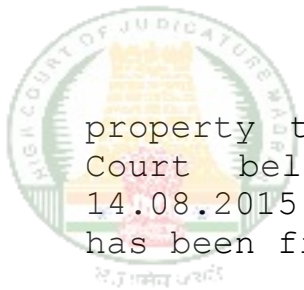
... Respondents/Respondents/
Respondents

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to allow this Civil Revision petition and to set aside the order passed by the learned Additional District cum Sessions Judge, Theni at Periyakulam, dated 14.08.2015 in I.A.No.542 of 2013 in A.S.No.12 of 2012.

For Petitioner: Mr.N.Dilip Kumar
For R-1 : Mr.M.Karuppasamy Pandiyan,
for Mr.K.Hemakarthikeyan
For R-2 : No appearance.

O R D E R

The first defendant in O.S.No.21 of 2008 on the file of the Sub Court, Uthamapalayam, is the Revision petitioner herein. The plaintiff in the said suit and the Revision petitioner herein had entered into a sale agreement for a sum of Rs.1,10,000/-. The agreement is dated 01.03.2006. As per the terms of the said agreement, the first defendant, namely, the Revision petitioner herein had already received a sum of Rs.1,00,000/- and the balance amount of Rs.10,000/- alone remains to be paid. The time for the performance of the agreement was fixed at two years. In the meanwhile, the first defendant is said to have executed a gift deed dated 17.08.2009 in favour of his wife, namely, the second defendant. Therefore, the plaintiffs filed the said suit not only for specific performance, but also for nullifying the said gift deed dated 17.08.2009. The suit was decreed on 08.02.2012. Questioning the same, the Revision petitioner herein filed A.S.No.12 of 2012 before the learned Additional District and Sessions Judge, Theni at Periyakulam. In the said first appeal, the Revision petitioner took out I.A.No.542 of 2013 for appointing an Advocate Commissioner to ascertain the market value of the



property that obtained on the date of the sale agreement. The Court below dismissed the said application by order dated 14.08.2015. Challenging the same, this Civil Revision petition has been filed.

2. The learned counsel appearing for the first respondent contended that the agreement is dated 01.03.2006. It is true that the sale consideration is fixed only for a sum of Rs.1,10,000/-. But even in the gift deed dated 17.08.2009 executed by the Revision petitioner herein in favour of his wife, the properties were valued only at Rs.2,00,000/-. This valuation was given by the first defendant himself in the gift deed in question and that impelled the first appellate Court to dismiss the Interlocutory application filed by him. The learned counsel appearing for the first respondent took me through the reasons set out in paragraph No.7 of the order impugned in this Civil Revision petition.

3. I am of the view that this being a suit for specific performance, equitable considerations will have to ultimately prevail. The learned counsel appearing for the Revision petitioner placed reliance on the decision of the Hon'ble Supreme Court reported in (2016) 1 S.C.C. 653. In paragraph No.8, the Hon'ble Supreme Court observed that though Section 20 of the Specific Relief Act, 1963, provides that the jurisdiction to decree specific performance is discretionary, the Court is not bound to grant such relief merely because it is lawful to do so. Paragraph No.8 of the said decision reads as under:-

"Section 20 of the Specific Relief Act, 1963, provides that the jurisdiction to decree specific performance is discretionary, and the Court is not bound to grant such relief merely because it is lawful to do so. However, the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles. Sub-section (2) of Section 20 of the Act provides the three situations in which the Court may exercise discretion not to decree specific performance. One such situation is contained in clause(a) of sub-Section(2) of Section 20 which provides that where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant, the decree of specific performance need not be passed. It is not to mention here that in the present case, though execution of the agreement dated 21.06.2004 between the parties is proved, but it



is nowhere pleaded or proved by the plaintiff that he got redeemed the mortgaged land in favour of defendant 2 in terms of the agreement, nor is it specifically pleaded that he was ready and willing to get the property redeemed from the mortgage."

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4. This Court had a look at the photographs of the property in question. This Court is of the view that the actual market value of the property in question that obtained on the date of the sale agreement would really be a material point that may govern the discretion of the Court below. In any event, the rights of the first respondent are not going to be infringed in any way. The first respondent can always lodge his objections to the report that may be filed by the Advocate Commissioner. Since the material that is sought to be brought on record is having a direct bearing on the discretion of the Court below, I am of the view that the order impugned in this Civil Revision petition deserves to be set aside.

5. The order impugned in this Civil Revision petition is set aside. The Civil Revision petition stands allowed, accordingly. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS-III)

To

1. The Additional District cum Sessions Judge,
Theni at Periyakulam,
2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.(2 Copies)

+ 1 CC TO MR.N.DILIP KUMAR, ADVOCATE IN SR NO.84566
+ 1 CC TO MR.K.HEMAKARTHIKEYAN, ADVOCATE IN SR NO.84415

PMU

BU/RSK/SAR-III :26.10.2018 : 3P/6C