

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2019

CORAM

THE HONOURABLE MR. JUSTICE M. SURESH

C.R.P.NO.465 OF 2015

1. M.Elumalai
2. M.Babu
3. M.Mohan

...Petitioners

Vs.

E.Senthil

...Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decreetal order dated 10.11.2014 made in I.A.No.714 of 2014 in O.S.No.79 of 2014 on the file of the District Munsif Court, Thiruthani.

For Petitioners : Mr.R.Bharath Kumar

For Respondent : Mr.D.Vijayan

ORDER

The order under challenge in the present civil revision petition is, rejection of the petitioners' application filed under Order 7 Rule 11 of CPC to reject the plaint.

2. The learned counsel appearing for the petitioners, by relying upon the plaint averments and the Power of Attorney, filed a memo along with the plaint, submitted that the power of attorney, which is the subject matter of the suit, was not coupled with interest. By relying upon the recitals in the power deed dated 23.04.2010, the learned counsel submitted that it has been specifically stated therein that the principal has not received any consideration.

3. The learned counsel appearing for the petitioners also relied upon the decision of this court reported in 2013(2) MLJ 668 (S.Subramanian and others vs. R.Dayananthan and others) and submitted that when the deed of power of attorney is not coupled

with interest, the respondent herein, cannot maintain the relief of cancellation. He would also submit that the only remedy available to the respondent is to file a suit for Specific Performance and in view of the bar under proviso to Section 34 of Specific Relief Act. When there is no cause of action for filing the suit, the trial Court ought to have allowed the application under Order 7 Rule 11 of C.P.C.

4. The learned counsel appearing for the respondents, on the other hand opposed such submissions by reiterating the justification of the trial Court in the impugned order and submitted that the Court below was justified in rejecting the petitioners' application. He would also submit that the issues raised by the petitioner herein are triable issues, which could be put forth before during trial and at this stage, the plaint need not be strucked down.

5. I have carefully considered the submissions made by the respective counsels. The first submission of the learned counsel for the petitioner is that the plaint averments evidence that the deed of power of Attorney dated 23.04.2010 was not coupled with interest, in view of the recitals in the power deed, which has been filed as a documents along with the plaint. I am unable to accept such a contention in view of the specific averments in the plaint, that pursuant to the execution of the power deed, the plaintiff had allegedly made certain payments to the defendants on various dates. When the plaint averments specifically states that the consideration has been passed touching upon the power given to him through the power of Attorney dated 23.04.2010, it can only be a triable issue before the court and it cannot be said that there was no cause of action to seek for the relief of declaration. Insofar as proviso to Section 34 of the Specific Relief Act is concerned, this Court is again unable to accept the petitioners' contentions. When the plaintiff had filed the suit with clear recitals that the petitioners herein had unilaterally cancelled the deed of power of attorney, allegedly after receiving the sale consideration on various dates pursuant to the execution of the deed of power of Attorney, the relief sought for declaring the cancellation as null and void would be maintainable.

6. The learned counsel submitted that the option available to the respondent herein would only be a suit for specific performance and that as such he cannot maintain the relief of declaration may not be acceptable, in view of the fact that in case the plaintiff succeeds in the present suit also, he would be entitled to deal with the property, in view of the absolute power granted therein. Nevertheless, all these aspects would be a subject matter to be proved during the course of trial.

7. Learned counsel for petitioner placed reliance of decision of this Court 2013(2) MLJ 668 cited supra and submitted that when the deed of power is not coupled with interest, it will not give raise to any cause of action seeking for the declaration of the cancellation deed. This Court has earlier held that the averments in the plaint would prima facie show that the power deed is coupled with interest and therefore, the decision relied upon by the petitioners herein, may not be applicable. Even otherwise, it is seen that the interest that was the subject matter in the decision of this Court is different from the interest in the present suit. As evidenced from the plaint averments, plaintiff alleges that pursuant to the execution of deed of power of Attorney, he had paid some amounts to the tune of Rs.42,12,500/- on various dates and also produced certain receipts for such payments. Hence, it can only be prima facie said that the power deed was coupled with interest.

8. It is made clear that all the above observations with regard to the status of power of Attorney as to whether it was coupled with interest or not has been made in this order only for the purpose of answering the grounds raised by the petitioners in the present Civil Revision Petition and that the observations made in the present order on Civil Revision Petition shall not be taken as a precedent or the trial Court shall not place reliance on any of the observations made herein and that the trial Court shall endeavour to come to an independent conclusion based on the oral and documentary evidence available before it.

9. In the light of the above observations, I do not find any reason to interfere with the order of the trial Court in rejecting the petitioners' application under Order 7 Rule 11 of C.P.C. Accordingly, Civil Revision Petition stands dismissed.

Sd/-

सत्यमेव जयते
Assistant Registrar

//True Copy//

WEB COPY
Sub Assistant Registrar

bga/ssb

TO:

1.The District Munsif,
Tiruthani

copy to:

The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.R.Bharath Kumar, Advocate sr.no.2598

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