

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :15.03.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).No.177 of 2016
and
C.M.P.No.913 of 2016

P.Loganathan

... Petitioner

-vs-

Krishnan

.... Respondent

PRAYER:

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and Decretal order dated 27.10.2015 made in I.A.No.192 of 2014 in O.S.No.26 of 2014 on the file of the District Munsif, Kothagiri, Nilgiris.

For Petitioner : Mr.C.Prabakaran

For Respondent : Dr.R.Gowri

ORDER

The above Civil Revision Petition is filed challenging the dismissal of the Application filed by the Revision Petitioner/Defendant in I.A.No.192 of 2014 in O.S.No.26 of 2014 on the file of the learned District Munsif, Kothagiri, Nilgiris.

2.The said Application was filed under Section 8 of the Arbitration and Conciliation Act, 1996(hereinafter referred to as 'the Act') to refer the disputes between the parties to Arbitration.

3.The brief facts which are necessary for disposing of the Civil Revision Petition are as follows:

(i)The Respondent/Plaintiff has filed a Suit in O.S.No.26 of 2014 on the file of the District Munsif, Kotagiri, Niligiris seeking a Permanent injunction restraining the defendant, his men, agents, servants, family members or anybody claiming through him in any manner whatsoever from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property, which is an extent of 3.02 Acres of land together with buildings bearing Door No.29/49 and 29/50 comprised in R.S.No.1144/2, 1144/3, 1144/6 and 1142/1B at Kotagiri Village with specific boundaries.

(ii) The case of the Respondent/Plaintiff is that the Revision Petitioner/Defendant had on a false promise induced the plaintiff to enter into a partnership agreement for the purpose of running a resort in the petitioner's property. Accordingly, an agreement was prepared by the Revision Petitioner/Defendant on 05.07.2013. In the said agreement, the Revision Petitioner/Defendant had cited wrong information with reference to the description of the plaintiff's property ie., the extent etc., Though the Revision Petitioner/Defendant had promised to rectify the said errors, he did not do so. On the contrary, he had forced the plaintiff to engage the services of an interior designer to renovate the property, for which, the plaintiff was made to cough up money and that apart, since he was unable to clear the dues to the interior designer, the plaintiff was made to borrow money from the Federal Bank. While so, the Revision Petitioner threatened to dispossess the plaintiff from the Suit property. The Revision Petitioner/Defendant is doing business in real estate and therefore, he is very influential. Therefore, the above Suit.

(iii) On receiving the summons in the above Suit, the Revision Petitioner/Defendant had come out with the impugned Application to refer the matter to Arbitration, invoking the provisions of Section 8 of the Act, since according to him, there was a partnership agreement entered into between the parties on 05.07.2013, in which, Clause.10 states that in the event of any dispute arising between the partners, the same would be resolved through Arbitration, the Revision Petitioner/Defendant sought to have the matter referred to Arbitration.

(iv) The said Application was contested by the Plaintiff/Respondent only on the ground that the Partnership Agreement had never come into existence since the same contained several defects. Despite several reminders, the Revision Petitioner/Defendant had failed to rectify the same and the Revision Petitioner/Defendant had also not submitted the Agreement before the Registrar of Firms for registration. However, all of a sudden, the Respondent/Plaintiff had come to know that the defective Agreement had been submitted before the Registrar of Firms using a forged signature of the Respondent/Plaintiff and that apart, the extent of the property in question has been described as 6 Acres in the said Agreement, whereas, the Respondent/Plaintiff was only entitled to the Suit property, which measures to an extent of 3.02 Acres of land.

4.The learned counsel for the Respondent/Plaintiff would contend that an absurd claim of Rs.28,00,000/- had been put forward by the Revision Petitioner/Defendant, which he has claimed for the first time, only after the Respondent/Plaintiff has filed the Suit. He further submitted that since the agreement never came into existence, the very Arbitration Clause itself cannot be invoked by the Revision Petitioner/Defendant. He further contended that there has been fraud which has been played by the Revision Petitioner/Defendant.

5.The learned District Munsif by order dated 27.10.2015, was pleased to dismiss the said Appllcation on the ground that on perusal of Exs.R.21 and R.22, which were the documents that had been produced before the Registrar of Firms, it is clearly seen that the dates of the duration of Agreement has not been filled and the extent of land belonging to the Plaintiff has been mentioned erroneously. The Court had also found that as early as in 2013, the Respondent/Plaintiff had brought the agreement to a close, which was also not challenged by the Revision Petitioner/Defendant. Challlenging the dismissal of the same, the Revision Petitioner is before this Court.

6.Learned counsel appearing for the Revision Petitioner would contend that once there is an Agreement, any dispute arising between the parties has to be resolved through Arbitration. Therefore, the order of the learned Judge is wrong on the face of the record. He further stated that the provisions of Section 8 of the Act are Mandatory, in that, once the party to the Suit has entered appearance and had taken out an Application before filing of the first statement of defence, the Court is duty bound to refer the parties to Arbitration.

7.A reading of the plaint would show that the Respondent/Plaintiff, who is admittedly the owner of the property in question has sought for a Permanent Injunction restraining the Revision Petitioner/Defendant from interfering with his peaceful possession and enjoyment of the Suit property. Though the partnership deal was made to develop a resort, the property in question has not been made the capital or the subject matter of the partnership agreement. In these circumstances, the plaintiff was well within his right to file a Suit to have his possession protected and the Suit would not come within the provisions contemplated under Clause 10 of the Partnership Agreement.

8.In the result, the Civil Revision Petition stands dismissed. No costs. However, considering the fact that the Suit is of the year 2014, the learned District Munsif, Kothagiri, Nilgiris is directed to dispose of the Suit in O.S.No.26 of 2014 within a period of six months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

tsg

To

1.The District Munsif,
Kothagiri, Nilgiris.

2. The section officer,
VR Section,
High court
Madras

+1cc to Mr.C.S.SARAVANAN, Advocate SR.No. 24967

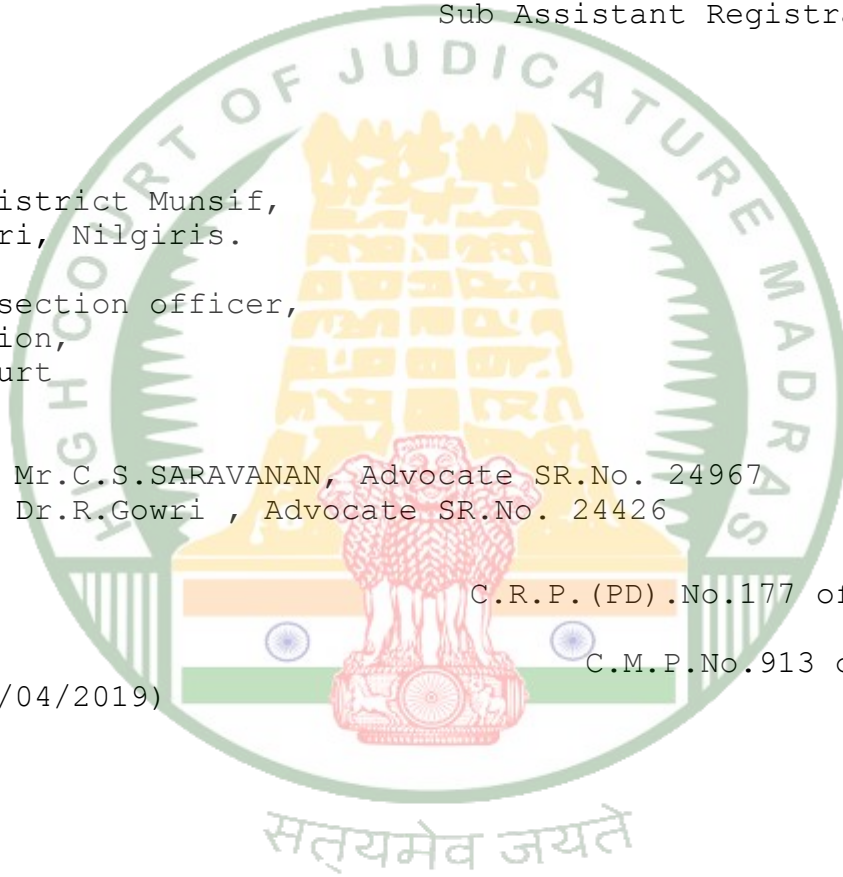
+1cc to Dr.R.Gowri , Advocate SR.No. 24426

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A.SK(30/04/2019)



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