



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.02.2019

WEB COPY

CORAM :

THE HONOURABLE MRS.JUSTICE **S.RAMATHILAGAM**

C.R.P. (MD) No.375 of 2019

C.Usharani

... Petitioner

vs.

1.Jegadesshwaran Pillai

2.C.Vignesh

... Respondents

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 29.11.2018 passed by the learned Additional District (Fast Track) Court at Palani in I.A.No.147 of 2018 in O.S.No.54 of 2012.

For Petitioner

: Mr.M.Solaisamy

ORDER

This Civil Revision Petition has been filed to set aside the order dated 29.11.2018 passed by the Additional District (Fast Track) Court at Palani in I.A.No.147 of 2018 in O.S.No.54 of 2012.

2.The petitioner herein is the first defendant in the suit in O.S.No.54 of 2012. The petitioner filed an interlocutory application in I.A.No.147 of 2018, in which, she has contended that the suit property owned by her as vacant site and after demolishing one building in the said property, she has constructed a building including second floor to an area of 30,000 sqr.ft., and she is in possession and enjoyment of the said property. Further, it is contended that she obtained a loan of Rs.80,00,000/- from the plaintiff/the first respondent and a sale agreement dated 10.09.2001 was given only as security for the said loan, whereas, the contention of the plaintiff that it is a mortgage deed and in which, the above said construction made by the petitioner is also suppressed by the plaintiff/the first respondent. Hence, the petitioner herein sought for appointment of an Advocate Commissioner to inspect the suit property and also note down the features of the suit property and for filing a report.

<https://hcservices.ecourts.gov.in/hcservices/> 3. In the counter statement, the plaintiff/first respondent contended that the petitioner herein has not stated about the existence of the building and further, already there was a direction



of this Court in C.R.P.(MD) No.216 of 2015 to dispose of the case on or before 31.12.2015, whereas, the petitioner has filed a petition at a very belated stage only with an intention to prolong the issue without giving a disposal of the same.

4.Further, the plaintiff/first respondent contended that the case was posted for arguments on 17.09.2018 and thereafter, the trial Court observed the relief sought by the plaintiff and his contention and also proceeded the case as per the direction of this Court passed in the above said C.R.P., and dismissed the same with cost. Aggrieved against the said dismissal, the petitioner herein has preferred the present Civil Revision Petition.

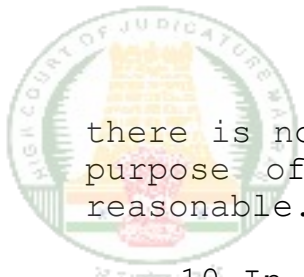
5.In the grounds, the petitioner contended that the plaintiff has suppressed the existence of the constructed house in the suit property and the trial Court ought to have appointed an Advocate Commissioner to inspect the suit property and the said property is given as security for the loan amount. Hence, the order of the trial Court is liable to be set aside.

6.Heard the learned counsel for the petitioner.

7.The petitioner contended that the plaintiff/the first respondent has suppressed the existence of the constructed house in the suit property and the said property given as security for the loan amount, whereas, the plaintiff/first respondent is trying to get the most valuable property, whereas, the trial Court observed from the objections made by the plaintiff/first respondent that even in the written statement, the petitioner has not denied anything about the constructions and already there was a direction of this forum to proceed the said C.R.P., and dispose of the same on or before 31.12.2015.

8.On perusal of the records, it is observed that the written statement filed by the defendants has not stated anything about the existence of the building. On perusal of the written statement filed by the petitioner, there is no mentioning about the description of the property that is mentioned in the said document filed by the plaintiff/the first respondent. The petitioner herein has stated the existence of the said property but on perusal of the sale agreement, the existence of the said building is not mentioned. The plaintiff/first respondent filed a suit for the relief of specific performance of contract and for permanent injunction and directing the defendant to pay the cost of the suit to the plaintiff.

9.On perusal of the entire records, it is observed that in the suit for specific performance of the contract and the alternate prayer of recovery of the advance amount paid by the plaintiff, there is no mention of any building in the suit property. It is mentioned in the sale agreement. Hence, the petitioner has not stated anything regarding his prayer sought in the suit. Further,



there is no building found in the said sale agreement and hence, the purpose of filing the petition at a very belated stage is not reasonable.

10. In view of the above, there is no merit in this Civil Revision Petition and the same is dismissed and the order dated 29.11.2018 passed by the learned Additional District (Fast Track) Court at Palani in I.A.No.147 of 2018 in O.S.No.54 of 2012 is hereby confirmed. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)

To

The Additional District (Fast Track) Court,
Palani.

+1cc to Mr.M.SOLAISAMY, Advocate, SR.No.49657

C.R.P. (MD) No.375 of 2019

MM

KK/SAR/27.04.2019/ 3P- 3C

25.02.2019

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