

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.2498 of 2018
and CMP No.15253 of 2018

Mr.B.Chandrasekar

... Petitioner

Vs

1. Mr.J.Tamilselvan
2. Mr.M.Loganathan
3. The Sub-Registrar,
Ambattur, Thiruvallur District,
Chennai.

... Respondent

Prayer: The Civil Revision petition filed under Section 115 of the Code of Civil Procedure, praying to set-aside the order and Decree dated 27.10.2017 passed in I.A.No.591 of 2016 in O.S.No.300 of 2014 on the file of the Sub Judge, Poonamalle Thiruvallur District.

For Petitioner : Mr.E.J.Ayyappan

For Respondents : Mr.Manoj Sreevalsan (for R1)

ORDER

The 2nd defendant in O.S.No.300 of 2014, aggrieved by the dismissal of his application filed under Order VII Rule 11 of Code of Civil Procedure, seeking rejection of the plaint, has come up on revision.

2. The suit is laid for specific performance of an agreement styled as an undertaking, dated 24.03.2003, claiming that the same renewed on 13.02.2014. The 1st defendant who is said to have entered into an agreement with the plaintiff had sold the property to the 2nd defendant on 02.06.2014. The suit came to be filed on 22.12.2014 seeking specific performance of the agreement. Apart from praying for specific performance as against the 1st defendant, the vendor, the plaintiff had also sought for a declaration that the Sale Deed in favour of the 2nd defendant, dated 02.06.2014 should be declared to be collusive and null and void and for a mandatory injunction to delete the entries in the register maintained by the Registrar of Assurances. The 2nd defendant, upon service of notice, filed the present application seeking rejection of the plaint.

3. The grounds alleged in support of the application under Order

VII Rule 11 of the Code of Civil Procedure that the prayer for cancellation of the Sale Deed in favour of the 2nd defendant is misconceived and that the valuation of the suit is improper.

4. The trial court which considered the application, dismissed the same, on the conclusions that these two grounds, even if they exist cannot be the reason for rejecting the plaint under Order VII Rule 11 of Code of Civil Procedure.

5. I have heard Mr.E.J.Ayyappan, learned counsel appearing for the petitioner and Mr.Manoj Sreevalsan, learned counsel appearing for the 1st respondent, plaintiff. Notice sent to the 2nd respondent namely the 1st defendant in the suit, has been returned as no such person. Considering the scope of the controversy, notice to 1st respondent is deemed unnecessary. The 3rd respondent though served, is not appearing either in person or through counsel duly instructed.

6. Mr.E.J.Ayyappan, learned counsel appearing for the petitioner

would vehemently contend that the valuation of the suit itself is wrong. Having claimed that the agreement was entered into for a sum of Rs.2,00,000/-, the plaintiff had chosen to value the suit as Rs.5,71,524/- and showing the same to be the market value of the suit property. The other ground is that the plaintiff has sought for a decree for Specific performance only against the 1st defendant along with a prayer for a cancellation of the Sale Deed.

7. No doubt, the prayer in the suit is not very happily worded. The Hon'ble Supreme Court in *AIR 1954 SC 75*, has pointed out as to how a suit for specific performance should be framed and what should be the form of a decree that should be granted in a suit for specific performance. However, these mistakes cannot afford a ground for rejection of the plaint. It is always open to the plaintiff to correct the mistake by way of an amendment.

8. As regards the valuation also, it is open to the defendants to raise the question of valuation under Section 12 of the Tamil Nadu Court fee and Suit Valuation Act and if the Court finds that the valuation is improper,

it can direct the plaintiff to amend the valuation and if there is a deficit of Court Fee, then the Court has to direct the plaintiff to make up the deficit. If the deficit is not made up, only then the plaint could be rejected. I, therefore, do not think that the two grounds that were raised as grounds for rejection of the plaint would fall under any of the provisions of Order VII Rule 11 of the Code of Civil Procedure in order to enable the Court to reject the plaint. Therefore, I do not see any infirmity in the order of the trial Court. The Civil Revision petition therefore fails and it is dismissed accordingly, confirming the order of the trial Court. No costs. Consequently, connected miscellaneous petition is closed.

08.10.2020

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Index: Yes/No

Speaking order / Non speaking order

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R.SUBRAMANIAN, J.

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To
The Sub Judge, Poonamalle,
Thiruvallur District.



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