

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(PD)Nos. 485 & 486 of 2018
and
C.M.P.No. 2546 of 2018

G.Jothimani ...Petitioner in Both CRPs

Vs.

K.M.Nachimuthu ...Respondent in both CRPs

Prayer in both CRPs: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 31.10.2017 made in I.A.Nos. 27 of 2016 & 688 of 2015 in O.S.No.590 of 2013 on the file of the IV - Additional District and Sessions Court, Coimbatore.

For Petitioner in both CRPs : Mr.P.Saravana Sowmiyan

For Respondents in both CRPs : Mr.Saitanyakesan

C O M M O N O R D E R

C.R.P.No.485 of 2018 is filed by the defendant in O.S.No.590 of 2013 against the order made in I.A.No. 688 of 2015, which is an application under Order 7 Rule 11 of C.P.C, seeking rejection of the plaint.

2. C.R.P.No.486 of 2018 is against an order made in I.A.No.27 of 2016, which is an application filed by the plaintiff under Order 3 Rule 1 & 2 of C.P.C., seeking permission to prosecute the suit through the power agent.

3. The suit in O.S.No.590 of 2013 was filed by the respondent herein, represented by his power agent, Rameshkumar for recovery of sum of Rs.18,17,263/-, being the sale consideration due and payable by the defendant under two sale deeds dated 06.05.2013 executed by the power agent in favour of the defendant. It is the claim of the plaintiff that the

defendant, who was the purchaser under the said sale deeds gave post dated cheques for payment of sale consideration and the cheques, on presentation, were returned unpaid with the endorsement "funds insufficient".

4. The suit was resisted by the defendant claiming that the sale deeds could not be registered for want of transfer of revenue records in the name of the plaintiff and it is also stated that once the revenue records are transferred, the defendant is ready and willing to pay the money. After filing the said written statement, the defendant, after two years, came up with the instant application in I.A.No.688 of 2015 seeking rejection of the plaint on the ground, permission of the Court under Order 3 Rule 2 has not been obtained and the cause of action paragraph in the plaint does not contain details of the power of attorney document. Soon after the filing of I.A.No.688 of 2015, the plaintiff filed I.A.No.27 of 2016 for premission under Order 3 Rule 1 and 2 of C.P.C. The Trial Court by an order dated 31.10.2017 allowed the appication in I.A.No.27 of 2016 and dismissed I.A.No.688 of 2015. Aggrieved, the defendant is on revision.

5. I have heard Mr.P.Saravana Sowmiyan, learned counsel for the petitioner and Mr.Saitanya Kesan, learned counsel for the respondent.

6. Mr.P.Saravana Sowmiyan, learned counsel for the petitioner would vehemently contend that non-compliance with Order 3 Rule 2 of C.P.C., is fatal to the suit. He would also contend that the plaint does not whisper about the power agent document, having been executed in favour of the defendant. According to him, non-mentioning of the power of attorney in the cause of action paragraph is fatal to the suit. As regards the revision against I.A.No.27 of 2016, Mr.P.Saravana Sowmiyan would contend that the Courts below was not right in allowing the application under Order 3 Rule 2, which was filed, admittedly, after the filing of application for rejection of the plaint in I.A.No.688 of 2015.

7. Contending contra, Ms.Saitanya Kesan, learned counsel for the respondent would submit that the non-filing of an application under Order 7 Rule 2 of C.P.C., is only procedural and therefore, it cannot form a ground for rejection of plaint. She would also further submit that it was the very same agent, who had executed the sale deeds of the year 2013 as power agent of the plaintiff therefore, the defendant was aware of the fact that the agent had sued for recovery of money. I have heard the rival submissions.

8. The defendant very well knew that the plaintiff is

represented by a power agent. In the written statement, which was filed in the year 2004, there is no whisper regarding the absence of permission under Order 3 Rule 2 of C.P.C. The application in I.A.No.688 of 2015 has been filed only with an object to delay the suit, which has been achieved by the defendant. Non-obtaining of permission to file a suit under Order 3 Rule 2 is only a procedural irregularity, which is not fatal. Soon after filing of I.A.No.688 of 2015 on 10.12.2015, the respondent herein has filed I.A.No.27 of 2016 on 21.12.2015.

9. Therefore, the Trial Court was justified in allowing I.A.No.27 of 2016 and dismissing I.A.No.688 of 2015. I do not find any irregularity or illegality in the order of the Trial Court so as to enable me to interfere with the same. This civil revision petition therefore fails and it is accordingly dismissed with a cost of Rs.5,000/- in each revision. It shall be taxable in the suit. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

kkn

To

1. The IV - Additional District and Sessions Court,
Coimbatore.
2. The Section Officer,
VR Section,
High court,
Madras.

WEB COPY

C.R.P(PD)Nos. 485 & 486 of 2018
and
C.M.P.No. 2546 of 2018

SSI (CO)
RN(20/10/2020)