

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.10.2020

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP. No. 1936 of 2020

Ambedkar

...Petitioner

Versus

Perumayee

...Respondent

Prayer: Civil Revision Petition filed under Section 227 of the Constitution of India, praying to allow the above revision and to set aside the fair and decreetal order dated 03.03.2020 made in REA. No.73 of 2016 in REP.No.93 of 2013 in O.S.No.109 of 2008 on the file of the Subordinate Court, Rasipuram.

For Petitioner : Mr.P.Mathivanan

ORDER

The Civil Revision Petition has been filed by the Judgment Debtor.

2.The respondent/plaintiff filed the suit in O.S.No.109 of 2008 before the Fast Track Court (Additional District Court), Namakkal, seeking for specific performance of the suit sale agreement dated 09.07.2005 or in the alternative to return the advance amount paid under the agreement. The petitioner herein is the defendant in the suit. The defendant remained absent and an exparte decree was passed in the suit. After exparte evidence was recorded, the learned District Judge, Fast Track Court, Namakkal passed the decree by granting the specific performance of the suit sale agreement and in the alternate it is open to the petitioner/plaintiff to recover the money. Thereafter, the respondent/plaintiff filed REP.No.93 of 2013. When the matter was taken up for hearing, the judgment debtor filed REA. No.73 of 2016 alleging that the Fast Track Court has no pecuniary jurisdiction to try the above said suit as well as granting two different reliefs. The said application was dismissed. Hence, the present Civil Revision Petition.

3.Heard the learned counsel for the petitioner and perused the materials available on record.

4.Learned counsel for the petitioner alleged that the decree passed by the Fast Track Court, Additional District Judge, Namakkal is not sustainable in law, since it consists of two different reliefs.

5.On perusing the decree, it clearly shows that Clause 1 and 4 relates to the relief for specific performance of the suit sale agreement. Clause 5 of the decree categorically states that as an alternative relief, the defendant was directed to return the advance amount of Rs.9,83,475/- along with interest at the rate of 18% per annum.

6.The next point is the case does not fall under the pecuniary jurisdiction of the Additional District Court and Sub-Court alone is having jurisdiction to try the suit. Taking into consideration that the suit was filed for specific performance of the suit sale agreement wherein the sale consideration was fixed at Rs.11,97,475/- and out of which Rs.9,83,475/- was paid as advance and balance to be paid is Rs.2,14,000/-, it is well within the pecuniary jurisdiction of the District Court. Hence, I do not find that the order passed by the Executing Court on this score, suffers from any irregularities.

7.The next point urged by the petitioner counsel that under the decree the main relief and the alternative relief both are granted, the said decree is against law. The main relief is for specific performance of suit sale agreement of Rs.11,97,475 and an alternative decree was sought for to refund the amount paid viz., Rs.9,83,475/-. On the point of granting of two reliefs, I find that a specific word mentioned in clause 5 of the decree is, "in alternatively", for specific performance of the suit sale agreement. Hence, it is open to the plaintiff either to go for depositing the balance sale consideration and to get the sale deed executed or he can file an execution petition for realization of the advance amount, by treating as it is a money decree. Hence, in view of the clear indication in clause 5 of the decree, I do not find any reason to accept the point urged by the learned counsel for the petitioner.

8.For the foregoing reasons, the Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Court, Rasipuram.

2.The Fast Track Court, Additional District Judge, Namakkal.

Copy to:

The Section Officer,

VR Section, High Court, Madras-104.

CRP.No.1936 of 2020

SSV(CO)

RV(14/12/2020)



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