



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.02.2020

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

WEB COPY

C.R.P.(PD)(MD)No.2333 of 2013

and

M.P.(MD)No.2 of 2013

1.M.Shyamala
M.Soorya Narayanan (Died)
2.M.Prasanna Venkatesh
3.R.Nagalakshmi
4.Bhuvaneswari
5.Padma
6.Minor Raghav ... Revision Petitioners / Defendants
vs.

1.M/s.Seven Hills Constructions,
Rep.by its Managing Partner,
Mr.D.Balan, No.B-6/2,
Sastri Road, Thillai Nagar,
Trichy-18. ... 1st Respondents / Plaintiff

2.R.Srinivasan ... 2nd Respondent / 6th Defendant

PRAYER: This Civil Revision Petition is filed under Section 227 of the Constitution of India, to call for the records relating to the order and decreetal order dated 05.08.2013 in I.A.No.866 of 2011 in O.S.No.113 of 2011 on the file of the learned III Additional District Judge, Tiruchirapalli and set aside the same, thereby allow the present civil revision petition.

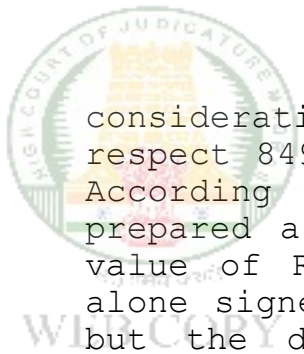
For Petitioner : Mr.ARL.Sundaresan
for Mr.Vinod Sathya Lazar

For Respondent : No Appearance

ORDER

The defendants in O.S.No.113 of 2011 have come up with this revision on their application for rejection of plaint in I.A.No.886 of 2011 being dismissed by the trial Court.

2. The suit in O.S.No.113 of 2011 was filed by the plaintiff seeking specific performance of an unregistered deed of sale signed by one of the defendants. According to the plaintiff, the defendants agreed to convey the property. Having received the total



consideration of Rs.20,80,000/- they agreed to execute the sale in respect 849 square feet out of a total extent of 5360 square feet. According to the plaintiff, as desired by the defendants, he had prepared a sale deed and got it engrossed on stamp papers of the value of Rs.1,45,000/-. On the 15.04.2009, the fourth defendant alone signed the sale deed and her husband has witnessed the same, but the defendants 1, 2, 4 and 5 had already provided their photographs and their identity cards to be incorporated in the sale deed. But due to certain dispute between the third defendant and others, the defendants 1, 2 and 5 did not executed the sale deed. Since his attempts to get the sale deed executed by the defendants failed, the plaintiff had come up with this suit for specific performance.

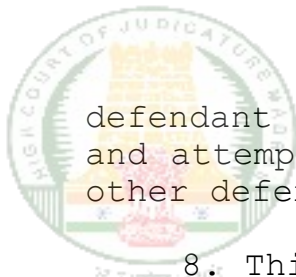
3. Upon receipt of summons, the defendants filed an application in I.A.No.866 of 2011 seeking rejection of the plaint. The application for rejection rests mainly on two grounds. The first ground is that the sale deed having been executed by only one of the sharers cannot be enforced specifically. The judgment in **Thirumeni Vs. Amirthalingam** [1997-3-L.W.102] was relied upon in support of the said contention. The second contention is that there is non compliance with the provisions of Sections 23 and 24 of the Registration Act to the extent that the sale deed executed by the fourth defendant has not been presented for Registration within a period of four months prescribed under the Act.

4. The trial Court dismissed the application on the ground that none of the reasons stated in the application for rejection of the plaint fall within the scope of Order 7 Rule 11 of the Code of Civil Procedure so as to enable the Court to reject the plaint. Aggrieved the defendants have come up with this revision.

5. I have heard Mr.ARL.Sundaresan, learned Senior Counsel, for Mr.Vinod Sathya Lazar, learned counsel for the petitioners.

6. The learned senior counsel for the petitioners would contend that the Court below was not right in dismissing the application for rejection of the plaint, more so when the suit itself is based on an unregistered sale deed, which has not been signed by all the parties. Placing reliance on the judgment of this Court in **Thirumeni Vs. Amirthalingam** [1997-3-L.W.102] the learned Senior counsel would submit that the sale deed signed by only one of the sharers cannot be specifically enforced.

7. I am unable to agree with the said contention of the learned Senior counsel. It is the specific case of the plaintiff that all the defendants agreed to sell the property to him and they have received the entire sale consideration. As per the desire of the defendants the sale deed was also prepared and duly engrossed on stamp papers of the value of Rs.1,45,000/-. While the fourth



defendant signed the sale deed, the other defendants did not sign and attempts made by the plaintiff to get sale deed executed by the other defendants failed. Hence, the plaintiff filed the suit.

8. This is not the case, where one person, who is entitled to a fractional share, entered into an agreement of sale to sell the entire property. In **Thirumeni Vs. Amirthalingam** [1997-3-L.W.102], one of the sharers, who had fractional share, had entered into an agreement of the entire property. This Court had held that such an agreement cannot be enforced against the entire property. Therefore, the said decision does not apply to the facts of the case. The contention of the learned Senior counsel is that Sections 22 and 23 of the Registration Act require that the sale deed has to be presented for registration within a period of four months and if it is not presented, it cannot be enforced. The provisions contained in Section 23 of the Act are subject to the provisions contained in Sections 24, 25 and 26 of the Act. Section 24 of the Act provides for registration of the documents, which are executed by several persons at different points of time. Section 25 of the Act provides for condonation of delay in execution of document and Section 27 of the Act deals with registration of documents, which are executed outside India.

9. None of these provisions contemplate registration of an unregistered sale deed, which is not signed by all the executants. I do think that the provisions relied upon by the learned Senior counsel have even a remote bearing on the issue involved in the suit. It is settled law that an unregistered sale deed can be treated as an agreement and the same can be enforced by way of a suit for specific performance. Such suit is not unknown to law. I find that the trial Court was perfectly justified in dismissing the application for rejection of the plaint. Therefore, this Civil Revision Petition is dismissed. It is however open to the defendants to raise all the defences open to them in the suit. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

The III Additional District Judge, Tiruchirappalli.

+1 CC to M/s.AL.GANTHIMATHI, Advocate (SR-4918[F]

C.R.P. (PD) (MD)No.2333 of 2013

ta

SDS (19.02.2020) 3P-3C

<https://hcservices.ecourts.gov.in/hcservices/>