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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on:02.09.2020

Pronounced on:25.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

C.R.P. (PD) (MD)No.274 of 2013

and

MP(MD).No.1 of 2013

K.Kalimuthu

... Petitioner/Petitioner/Plaintiff

vs.

1.T.Kalimuthu

2.K.Gopal

3.K.Thirupathy

4.K.M.Perumal

..Respondents/Respondents/Defendants

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 28.08.2012 passed in I.A.No.590 of 2011 in O.S.No.172 of 2008 on the file of the Principal District Court, Virudhunagar District, Srivilliputhur.

For Petitioner : Mr.M.P.Senthil

ORDER

The present revision petition is filed challenging an order dismissing I.A.No.590 of 2011, filed by the revision petitioner for amending the plaint. The suit was laid by the revision petitioner for specific performance for a sale agreement alleged to have been executed by the first defendant in his favour.

2. The case of the petitioner is that the first defendant had borrowed some loan and created two mortgages over the suit property for securing the repayment of the said debt. He also pleads that in lieu of the interest, he was put in possession. It is the further case of the plaintiff that the defendant had executed a sale agreement, dated 14.04.2008 and has laid the suit for specific performance. However, in the suit he has not prayed for delivery of property, and since he has been put in possession not under the agreement of sale but as a mortgagee, he has filed I.A.590 of 2011 for amending the plaint to include the prayer of symbolic delivery of the suit property.

3. In the suit, the fourth respondent claims that the first defendant had executed earlier agreement of sale dated 04.11.2007 for the sale of the suit properties to him, pursuant to which he had



instituted a suit in O.S.No.85 of 2008 for specific performance of the said sale agreement.

4. The trial Court dismissed the said interlocutory application on the ground that there cannot be two suits for specific performance and since the plaintiff himself has claimed that he is in possession, he is not entitled to claim symbolic delivery of the property. Aggrieved by the said order, the plaintiff has come forward with this petition.

5. Heard the learned counsel appearing for the petitioner.

6. Under Section 22(1)(b) of the Specific Relief Act, the Court cannot grant a decree for delivery of possession unless it is specifically sought. Even though the plaintiff might have asserted that he is in physical possession of the property, the same is not claimed under the sale agreement but in his capacity as the mortgagee. Hence, to avert any possible technical resistance that might be offered in the eventuality of the plaintiff succeeding the suit, he has come forward with this petition. This is apparent from the tenor of the affidavit filed in support of this application.

7. Turning to the order of the trial Court, the learned trial Judge has not addressed the issue from the angle, from which this Court now approached. Instead its consideration of a suit for specific performance filed by the fourth defendant is not germane to the issue. This Court considers it appropriate to allow this revision petition. Accordingly, the decreetal order dated 28.08.2012 passed in I.A.No.590 of 2011 in O.S.No.172 of 2008 on the file of the Principal District Court, Virudhunagar District, Srivilliputhur is set aside.

8. In the end, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

ta/CM



To

The Principal District Judge,
Virudhunagar District, Srivilliputhur

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Copy to:

The Section Officer
V.R.Section, Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+1 CC to M/s.M.P. SENTHIL, Advocate (SR-18071[F] dated 25/09/2020)

C.R.P.(PD)(MD)No.274 of 2013

and

MP(MD).No.1 of 2013

25.09.2020

NA (CO)

NR (20/10/2020) 3P : 5C