

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CRP (NPD) No. 29 of 2020

Murugaiyan

... Petitioner/Plaintiff

-Vs-

N.J.Sundarajan @ Sundarrasu

... Respondent /
Defendant

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decree of rejection of plaint dated 09.08.2019 made in unnumbered suit in O.S.No.... of 2019 on the file of Court of the Principal Sub Judge, Cuddalore.

For Petitioner : Mr. Ravichandran Sundaresan

For Respondent : Mr. C.Prabakaran

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ORDER

This Civil Revision Petition has been filed by the plaintiff in unnumbered O.S.No.... of 2019 which the suit had been filed by the revision petitioner herein against the respondent/defendant.

2. It is the contention of Mr. Ravichandran Sundaresan, learned counsel for the revision petitioner that the revision petitioner had filed a suit based on an agreement of sale dated 22.03.2019. The agreement provided time period of two years for execution. However, averring that there are various persons inimical to the plaintiff, who are putting a pressure on the defendant from enforcing the said agreement, the suit had been filed seeking the relief that the defendant should not deal with the property or alienate or create encumbrance over the said property. It is claimed by the learned counsel that an application had been filed under Order 2 Rule 2 of the Code of Civil Procedure reserving right to institute a suit for specific performance. However, the suit had been rejected by the learned Judge. I hold that the said order is correct.

3. Mr.C.Prabakaran, learned counsel for the respondent was present but was not called.

4. An agreement of sale does not create any charge or right over the property. Section 54 of the Transfer of Property Act is as follows:-

“54. “Sale” defined.—“Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. Sale how made.—Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Delivery of tangible immoveable property takes place when

the seller places the buyer, or such person as he directs, in possession of the property. Contract for sale.—

A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property. ”

5. The suit should have been instituted seeking specific performance of the agreement of sale dated 22.03.20219 and if at all the plaintiff seeks protection, from the property being encumbered, then he can always seek a separate relief by way of filing Interlocutory Application, but that cannot be the only prayer in a suit since the defendant/owner has every right to deal with the property and an agreement is only an executory contract and does not create any right over the property. I do not find any reason to interfere with the order passed.

6. However, the learned counsel stated that permission may be granted to institute a suit for specific performance. A court cannot grant any such permission. If the cause of action survives, if the cause of is within the period of limitation and if the plaintiff feels that he is a right to institute the suit, he has always at liberty to institute the suit.

7. With the above said observation, this Civil Revision Petition is dismissed. No order as to costs.

03.06.2021

vsg

Index: Yes/No

Internet: Yes/No.

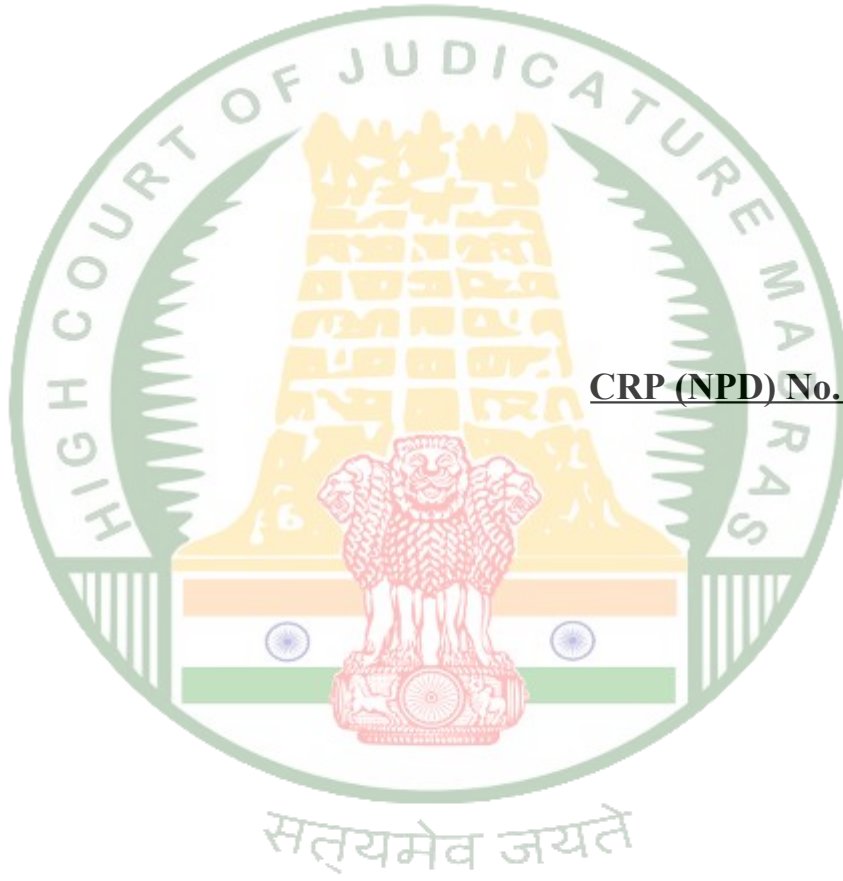
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C.V.KARTHIKEYAN, J.

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