

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.No.2071 of 2016 and
CMP.No.10792 of 2016

Sujaya Misra

..Petitioner

Vs.

R.Shanmugavelu

..Respondent

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order dated 16.03.2016 in IA.No.432 of 2015 in OS.No.26 of 2014 on the file of the Principal District Court, Kancheepuram, Chengalpet

For Petitioner : Mr.R.Subramanian

For Respondent : Mr.K.Meenakshi Sundaram

ORDER

This civil revision petition is filed against the fair and decretal order dated 16.03.2016 in IA.No.432 of 2015 in OS.No.26 of 2014 on the file of the Principal District Court, Kancheepuram, Chengalpet.

2. The petitioner is the defendant in the suit filed by the respondent herein for specific performance in pursuance to the memorandum of understanding dated 20.03.2013. According to the petitioner, the petitioner and the respondent had entered into memorandum of understanding dated 20.03.2013. According to the memorandum of understanding, she is the sole and absolute owner of the building measuring to an extent of 6000 sq.ft. situated at Door No.5/6, Defence Officers Colony, Nandambakkam, Chennai. When the petitioner offered to sell the same, the respondent agreed to purchase the same for the total sale consideration of Rs.5,50,00,000/-. In the memorandum of understanding they further added terms that on three occasions, on or before 15.04.2013, the respondent has to pay 50% of the sale consideration i.e. Rs.2.25 crores out of Rs.5.50 crores. Thereafter, when the respondent was ready and willing to pay the amount, the petitioner refused to execute sale deed and as such the respondent filed the suit. The petitioner averred that the respondent had already settled 3/4 undivided share in the total extent in favour of her husband, son and daughter by the registered settlement deed dated 12.06.2012 registered vide document No.1749 of 2012 in the Office of the Sub Registrar, Alandur. Thus, the petitioner is holding only 1/4 undivided share in the

entire extent. Therefore, the suit was filed only in respect of 1/4 share in the total extent and accordingly calculated value and paid court fees.

3. The petitioner filed petition under Order 7 Rule 11 (b) of CPC to reject the plaint on the ground that when the respondent entered into memorandum of understanding in respect of the entire property, he filed suit only in respect of 1/4 share alone. Therefore, the respondent did not value the suit property and it is liable to be rejected. Further averred that the petitioner entered into memorandum of understanding in respect of the entire property for total sale consideration of Rs.5.50 crores whereas the suit is filed only in respect of 1/4 share that is against the memorandum of understanding. On perusal of the written statement filed by the petitioner herein, she categorically admitted that the suit property was purchased by her by registered sale deed dated 06.12.1975. Thereafter she settled 3/4 of the undivided share of the total property in favour of her husband, son and daughter by registered sale deed dated 12.06.2012. She was no longer absolute owner of the entire suit property and she is entitled to only 1/4 undivided share over the same. In the memorandum though stated that at the time of execution of sale deed, the petitioner shall furnish original settlement deed and the original sale

deed in respect of the suit property to the respondent herein, thereafter the petitioner stated in her written statement that she is having title only in respect of 1/4 share in the total extent. That apart, the respondent filed suit only for 1/4 of the total extent and accordingly paid court fees. Therefore, there is no question of deficit court fees paid by the respondent herein. The petitioner filed petition for rejection of plaint under Order 7 Rule 11(b) of CPC. It is relevant to extract the provision under Order 7 Rule 11(b) of CPC as follows:

11. Rejection of Plaint: The plaint shall be rejected in the following cases:

(b) Where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so

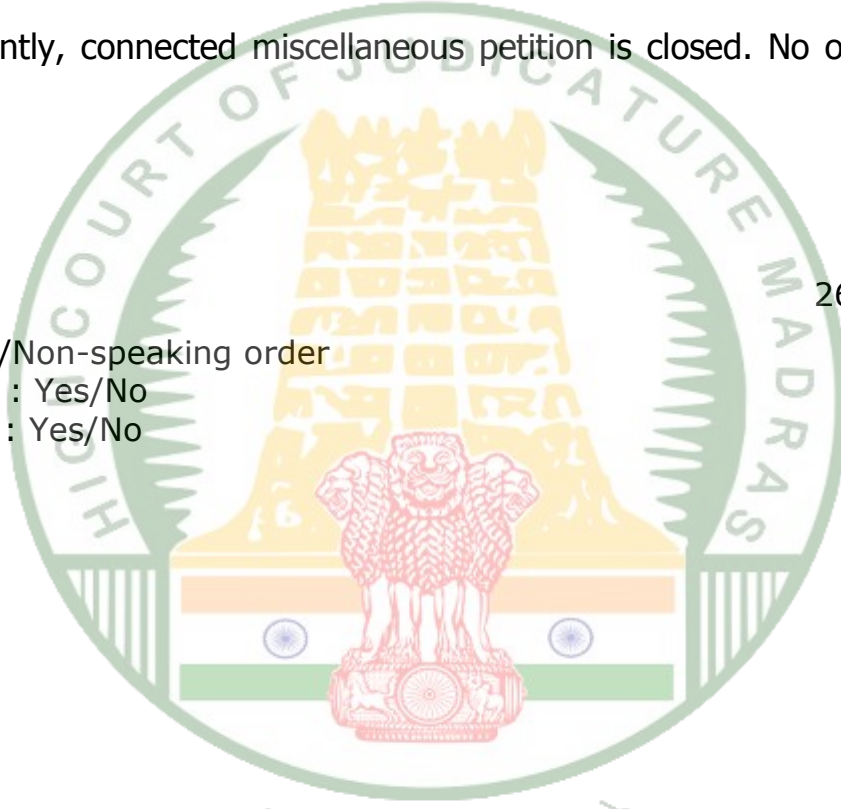
4. Accordingly, if the relief claimed is under valued, it is required to pay the correct court fees. As pointed out supra, the suit itself filed only for 1/4 of undivided share of the total extent. The respondent properly valued the suit and paid correct court fees. In fact, the petitioner filed petition to pass order directing the respondent to pay correct court fee for a sum of Rs.5,50,00,000/- for the total sale consideration, failing which the plaint may be rejected. Admittedly, the respondent filed suit in

respect of 1/4 undivided share in the total extent of 6000 sq.ft. Therefore, the court below rightly dismissed the petition and this Court finds no irregularity or infirmity in the order passed by the court below.

5. Therefore, this civil revision petition is dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

26.02.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
lok



To

The Principal District Judge,
Kancheepuram, Chengalpet

WEB COPY

G.K.ILANTHIRAIYAN,J.

lok



CRP.PD.No.2071 of 2016

WEB COPY

26.02.2021