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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2021

CORAM:

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P. No.1534 of 2021

and

C.M.P.No.12015 of 2021

(Through Video Conference)

1) Rajathi @ Rajammal

2) Durai @ Durairajan

.. Petitioners/Petitioners/Defendants

Versus

Kanna

.. Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed by the Learned Principal District Judge at Perambalur in I.A.No.61 of 2018 in O.S.No.20 of 2017 dated 23.03.2021.

For Petitioner : Mr.G.Ilamurugu

O R D E R

This Civil Revision Petition is filed for setting aside the order of the learned Principal District Judge, Perambalur in I.A.No.61 of 2018 in O.S.No.20/2017 dated 23.03.2021.

2. I.A.No.61 of 2018 was filed for rejecting the plaint under Order VII Rule 11 of the Civil Procedure Code. Learned counsel for the petitioners submitted that the respondent / plaintiff filed a suit in O.S.No.20/2017 seeking the following reliefs:

(a) For declaration that the plaintiff is the absolute and exclusive owner of the suit property and for a consequential relief of recovery of possession directing the defendants to deliver possession of the suit property to the plaintiff;



(b) For future mesne profits which may relegated separate proceeding under Order 20 Rule 12, C.P.C; and

(c) For costs.

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3. The case of the plaintiff is that he purchased the suit property from one Annadurai. Later, he came to know that the said Annadurai is not the real owner but the real owner is one Hasan Babu. Again, the plaintiff purchased the property from the said Hasan Babu on 23.03.2015. The defendants, who are the husband and wife, entered into the Sale Agreement with the plaintiff on 24.06.2013 agreeing to purchase the suit property for a total sale consideration of Rs.1,15,00,000/- (Rupees One Crore and Fifteen Lakhs only). The defendants paid totally a sum of Rs.7,00,000/- (Rupees Seventy Nine Lakhs) as advance. The possession of the property is with the defendants. However, without seeking either the relief of specific performance or the relief of cancellation of the Sale Agreement, the plaintiff had straight away filed a suit for declaration of title and for recovery of possession. This suit is barred under Order VII Rule 11 of the Civil Procedure Code. One more submission made by the learned counsel for the petitioners is that even as per the plaint averments made in paragraph no.4, the value of the suit property was fixed at Rs.1,15,00,000/- . However, the property was valued at Rs.24,96,000/- (Rupees Twenty Four Lakhs Ninety Six Thousand only) and the court fee was paid thereon, which according to the learned counsel for the petitioners, is wrong.

4. Considered the submissions.

5. The order passed by the learned Principal District Judge, Perambalur reads that "the issue with regard to the valuation of the suit property was raised before the Court, even before registering the suit. After satisfying with the reasons, the suit has been taken on file. Therefore, there is no question of the suit being under valued or there is no proof filed to show valuation". This part of findings of the learned trial Judge that there is no proof filed to show the valuation of the suit property, palpably is not correct for the reason that even in paragraph no.4 of the plaint averments, the Sale Consideration for the suit property was fixed at Rs.1,15,00,000/- Therefore, this Court is of the considered view that this part of the order is not correct and is liable to be set aside and accordingly, it is set aside.

6. The question of valuation is left open to be decided by framing appropriate issue. So far as the claim of rejection of the plaint on the ground that the suit is barred on other grounds, such as lack of cause of action, this Court is of the



view that the averments made in the plaint and the petitioners' claim are matter of facts and are to be proved by producing necessary oral and documentary evidences things stand now, it is clear that the petitioners have paid only Rs.79,00,000/- out of the Sale Consideration of Rs.1,15,00,000/- and the balance Sale Consideration of Rs.36,00,000/- is not filed. These issues are to be necessarily tried and there is a cause of action for filing the suit.

7. Therefore, this Court is of the considered view that dismissal of the petition is correct, except the reason stated with regard to valuation of the suit. The learned trial Judge is directed to frame issues with regard to valuation of the suit property and payment of court fees along with other appropriate issues and decide the suit on merits. Accordingly, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IV)

// True Copy//

Sub Assistant Registrar

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To:

The Principal District Judge,
Perambalur.

+lcc to Mr.G.Ilamuruga, Advocate, S.R.No.38965

Order made in
C.R.P. No.1534 of 2021

VBM(CO)
SU(02/09/2021)