



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.03.2021

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP (MD) No.479 of 2021

N.Siavagami

... Petitioner / Plaintiff

vs.

1) R.K.Sridharan

2) P.Jeganathan

... Respondents / Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, against the judgment and decree dated 08.01.2021 made in unnumbered O.S.SR.No.1173/2020 dated 09.09.2020 on the file of the Principal Sub Court, Madurai.

For Petitioner : Mr.R.Suriyanarayanan

ORDER

Against the rejection of the plaint, this revision petition has been filed by the plaintiff.

2.The revision petitioner as plaintiff filed a suit in O.S.SR.No.7113/2020 on 09.09.2020 against the respondents/defendants for specific performance with the pleadings that the suit property was allotted to the 1st respondent/1st defendant by the Tamil Nadu Housing Board vide allotment order No.S.D.10/6875/88, dated 31.10.1988 and in order to process the application for getting the sale deed from the Tamil Nadu Housing Board, the 1st defendant appointed the 2nd respondent/2nd defendant as his power agent through a registered general power of attorney dated 23.02.2000. The 2nd defendant with the knowledge and concurrence of the 1st defendant, had entered into a registered sale agreement dated 07.07.2008 with the revision petitioner/plaintiff in respect of the suit property and the total sale consideration was fixed at Rs.3,00,000/- out of which, the petitioner/plaintiff paid Rs.1,00,000/- on the date of sale agreement itself, agreeing to complete the sale transaction at the moment the 2nd respondent/2nd defendant would get the sale deed in the name of the 1st respondent/1st defendant from the Tamil Nadu Housing Board.

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



3.The revision petitioner/plaintiff has further stated in the plaint that since there was a delay in getting sale deed from the Tamil Nadu Housing Board, the petitioner/plaintiff paid the balance sale consideration to the 2nd respondent who on receipt of the same, handed over the possession of the suit property, thereby, the petitioner/plaintiff is in possession and enjoyment of the suit property. Thereafter, on enquiry, the petitioner/plaintiff came to know that the 2nd defendant could not get the sale deed from the Tamil Nadu Housing Board for want of dues payable to the Government. Since the defendants did not perform their part as per the sale agreement dated 07.07.2008 even after completion of 11 years, the petitioner/plaintiff issued a legal notice dated 03.02.2020 and the 2nd defendant sent a reply notice dated 12.03.2020 denying the alleged sale agreement in favour of the petitioner/plaintiff and consequently denied to execute the sale deed. Hence, the above suit has been filed. The trial Court finding that no sale deed issued by the Tamil Nadu Housing Board in favour of the 1st respondent/1st defendant is produced conferring title to the 1st respondent/1st defendant in respect of the suit property, held that the sale agreement entered into between the plaintiff and the defendants without acquiring any title over the suit property, is unenforceable, as such, the plaint cannot be taken on file and accordingly rejected the plaint. Against such rejection, the instant revision has been filed.

4.The learned counsel for the revision petitioner/plaintiff would state that the learned Judge ought to have numbered the plaint first and after serving notice only, can reject the plaint that too on the grounds mentioned under Order 7 Rule 11 CPC, whereas, in this case, the learned Judge without resorting to the said procedure, has straightaway rejected the plaint without even numbering it, which is illegal. He would further state that only after receipt of the entire sale consideration from the petitioner/plaintiff, the respondents/defendants handed over the possession of the suit property to the plaintiff that is the residential address of the petitioner shown in the plaint as well as in this revision and the only thing to be done by the defendants is to execute the sale deed in favour of the petitioner/plaintiff after obtaining sale deed from the Tamil Nadu Housing Board, as it is an incidental obligation, since the 1st defendant had also paid the entire amount to the Tamil Nadu Housing Board, as such the sale agreement is enforceable. Thus, he would pray for setting aside the impugned order.

4.Heard the learned counsel for the petitioner. In view of the order going to be passed, notice to the respondents is not necessary.



5.Perusal of record shows that the revision petitioner/plaintiff has filed the above suit for the relief of specific performance contending that even after expiry of 11 years from the date of sale agreement dated 07.07.2008, since the defendants did not perform their part of contract by executing the sale deed in favour of the revision petitioner/plaintiff in respect of the suit property, the petitioner/plaintiff sent a legal notice dated 03.02.2020 which was replied on 12.03.2020 denying the alleged sale agreement in favour of the petitioner/plaintiff. The learned Judge holding that when the Tamil Nadu Housing Board itself did not convey any title to the suit property, in favour of the 1st defendant, he cannot convey any title much less a better title in respect of the suit property in favour of the petitioner/plaintiff through the 2nd respondent/2nd defendant, as such, the sale agreement between the parties is unenforceable in law, rejected the plaint at the threshold without numbering. The said approach of the learned Judge in my opinion is erroneous. As rightly contended by the learned counsel for the petitioner, the Court can reject the plaint only on the following grounds stated under Order 7 Rule 11 CPC:-

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

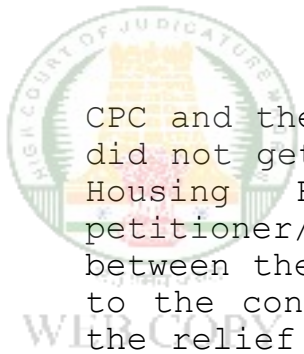
(a)where it does not disclose a cause of action;
(b)where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c)where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d)where the suit appears from the statement in the plaint to be barred by any law.

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.''

6.Perusal of the impugned order shows that the plaint has not
<https://hccerps.courtsofmadras.org/crpservices/> any of the grounds mentioned under Order 7 Rule 11



CPC and the learned Judge has held that since the 1st respondent who did not get better title over the suit property from the Tamil Nadu Housing Board, he cannot convey better title to the petitioner/plaintiff and therefore, the sale agreement entered into between the parties is unenforceable. Even if the trial Court comes to the conclusion that the petitioner/plaintiff is not entitled to the relief of specific performance, since it is a suit for specific performance, the petitioner/plaintiff can be permitted to amend the prayer seeking the alternative relief of return of the consideration amount paid by the petitioner/plaintiff and therefore, rejection of the plaint at the threshold without even numbering the plaint is not proper.

7.Thus, the judgment and decree dated 08.01.2021 made in unnumbered O.S.SR.No.1173/2020 dated 09.09.2020 on the file of the Principal Sub Court, Madurai, is set aside and the trial Court is directed to number the suit and then proceed with the matter in accordance with law.

8.With the above directions, the Civil Revision Petition is allowed. No costs.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

The Principal Sub Judge,
Madurai.

ORDER MADE IN
CRP(MD)No.479 of 2021
DATED : 16.03.2021

SDS(11.05.2021) 4P 2C