



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Tuesday, the Eighth day of March Two Thousand Twenty Two

PRESENT

THE HON`BLE MR.JUSTICE C.V.KARTHIKEYAN

CMP.No.3029 of 2022

in AS.No.461 of 2018

1 K.DHANASEKARAN

[PETITIONERS]

2 GANAPATHY

Vs

J.RAJENDRAN

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to permit the petitioner/Appellant to raise the following additional grounds in the above Appeal suit.

Additional Grounds.

"9. The Trial Court ought to have appreciated the fact that the contention that the plaintiff was having the knowledge of the execution of the sale deed on 27.1.2006, by Tmt. Shobana Dolia, and others to and in favour of the 2nd Defendant viz., K.R.Ganapathy conveying the Plot No.45, and the same was registered as document No.428 of 2005, registered at the office of the Sub Registrar, Guduvanchery, on account of the fact that on the same date of execution of the above said document i.e. on 27.1.2006, the plaintiff purchased plot No.48 vide document No.423/2005, dated 27.1.2006, registered at the office of the Sub Registrar, Guduvanchery, which is one of the Plots alleged to have agreed to be sold by the Defendants to the Plaintiff under the sale agreement dated 6.12.2004.

10. The Trial Court ought to have appreciated the fact that if at all the plaintiff is having any objection in execution of the sale deed dated 27.1.2006, by Tmt.Shobana Dolia, and others to and in favour of the 2nd Defendant viz., K.R.Ganapathy conveying him the Plot No.45, which is one of the Plots alleged to have agreed to be sold by the Defendants to the plaintiff under the sale agreement dated 6.12.2004, the plaintiff could have raised objection to the execution of the sale deed, however, on the contrary the Plaintiff kept silent because of the fact that he knew that the agreement for sale dated 6.12.2004, is only a sham and nominal and not to be acted upon.



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11. The Trial court ought to have appreciated that the Plaintiff was having the knowledge that as on the date of execution of the agreement for sale dated 6.12.2004, the defendants were not the owners of the Plot No.45, and consequently, they cannot seek the relief of specific performance as against the Defendants.

12. The Trial Court ought to have appreciated the contention of the Defendants that the execution of Agreement for sale dated 6.12.2004, is only a sham nominal and both the parties to the agreement for sale were having the mutual understanding that the said Agreement for sale is not to be acted upon.

13. The Trial Court ought to have taken into consideration the fact that because of the sudden rise in the market value of the property and taking advantage of the sale agreement dated 6.12.2004, which is a sham and nominal one, the Plaintiff filed the above suit with an ulterior intention to grab the property.

14. The ulterior motive of the Plaintiff to grab the property of the Defendant by filing a false suit would be proved from the fact that the plaintiff obtained a mortgage loan of a sum of Rs.1,00,000/- (Rupees One Lakh only) from one J.Mohan, by mortgaging the suit schedule mentioned property, claiming him to be the owner of the property, when in fact he is not the owner of the said property, by a registered mortgage deed registered as Document No.5979 of 2006, dated 29.05.2006, at the office of the Sub Registrar, Guduvancherry and the said mortgaged deed was cancelled by a registered mortgage cancellation deed registered as Document No.5511 of 2009, registered at the Office of the Sub Registrar, Guduvancherry. (Copy of the cancellation of Mortgage deed bearing document No.5511 of 2009, is filed in the additional typed set of papers) and thus render justice. (CMP.No.3029/2022)

Order : This petition coming on this day for hearing upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.K.VENKATESAN, Advocate for the petitioners and of M/S.C.JAGADISH, Advocate for the Respondent, the court made the following order:-

The petition has been filed by the appellants seeking permission to raise additional grounds in the memorandum of grounds of appeal in A.S.No.461 of 2018.

2. The aforementioned appeal had been filed by the defendants in O.S.No.459 of 2007 who had suffered by the Judgment and decree dated 29.02.2016 passed by the learned Additional District Judge, Kancheepuram District at Chengalpattu.

3. The suit had been filed for specific performance and also for alternate relief of refund of the advance amount paid.



4.The written statement was filed by the present appellants and the parties went to trial. Thereafter, on 29.02.2016, Judgment came to be passed decreeing the suit for specific performance. Questioning the reasons and findings given, the defendants have filed the present First Appeal.

5.The present Civil Miscellaneous Petition has been filed seeking permission to raise additional grounds. They had been numbered as additional grounds numbers 9 - 14. The additional grounds Numbers 9 - 13 primarily revolve around the knowledge of an agreement by the plaintiff/respondent herein and ground No.12 is with respect to the fact that the agreement of sale was not meant to be acted upon. Ground No.13 was with respect to increase in the market value. These are all issues which can always be urged whether they are raised as grounds or not. However, ground No.14 touches upon a particular Registered Mortgage Deed registered as Document No.5979/06 dated 29.05.2006 in the office of the Sub Registrar, Guduvancherry.

6.As a fact there is no reference made about that particular mortgage in the written statement. Therefore, this particular ground cannot be now urged.

7.In view of the above, the petition is allowed with respect to additional ground Nos.9 - 13 and dismissed with respect to ground No.14. However, during the course of arguments, since, any relief under the Specific Relief Act, could also be discretionary and though the power of discretion is quite limited and caution has to be exercised, still the learned counsel for the appellant may raise the issue of mortgage during the course of arguments.

8.With the above observation, this Civil Miscellaneous Petition is partly allowed.

-sd/-
08/03/2022
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Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.



TO

THE ADDITIONAL DISTRICT JUDGE,
KANCHEEPURAM DISTRICT AT CHENGALPATTU.

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C.C. to M/S.K.VENKATESAN Advocate SR.NO.1588/2022

Order

in

CMP.No.3029 of 2022

in AS.No.461 of 2018

Date :08/03/2022

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