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C.R.P.(PD) No.2069 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2022

CORAM : JUSTICE N.SESHASAYEE

C.R.P.(PD) No.2069 of 2020
and CMP.No.13026 of 2020

1.M.Y.Musrathtullah
2.M.K.Yusaf
3.M.Y.Subaitha

... Petitioners / Defendants 2 to 4

Vs.

1.K.Ashok Kumar
2.N.Muthusamy

... Respondents /
Plaintiff, 1st defendant

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, praying to pass an order strike-off the plaint/suit in O.S.No.764 of 2019 pending on the file of the I Additional District Munsif Court, Coimbatore.

For Petitioners : Mr.N.Ramesh

ORDER

This revision is filed by the defendants 2 to 4 in O.S.No.764 of 2019 pending on the file of I Additional District Munsif Court, Coimbatore, seeking the interference of the Court to strike out the plaint in O.S.No.764



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of 2019 for non-disclosure of cause of action against them.

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2. The facts of the case are as follows :

The plaintiff in O.S.No.764 of 2019 contends that he holds a sale agreement which he had entered into with the first defendant in the suit as regards the sale of the suit property. The first revision petitioner / second defendant has since purchased the suit property from the first defendant. The plaintiff has filed the suit to declare that the sale deed which the first defendant had executed in favour of the second defendant as null and void. Secondly he has also mentioned in the plaint in paragraph No.5 that vis-a-vis the agreement on which he rests his cause of action, he admits that he had received back the advance amount which he had paid to the first defendant from the revision petitioners herein.

3. The learned counsel for the revision petitioners submits that the plaint on its face value does not disclose the cause of action and it is vexatious.

4.1 This Court ordered notice to the respondents. The first respondent is



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the plaintiff and the second respondent is the first defendant in the suit.

The notice ordered to the first respondent was returned unclaimed.

4.2 This Court is informed that the first defendant has now died and inasmuch as the second defendant has already obtained the sale deed from the first defendant, there is no need to implead his legal representatives in this revision.

5. There is considerable merit in the submissions of the learned counsel for the revision petitioners / defendants 2 to 4. There are two parts to the plaintiff's case. The first part relates to building a cause for action on the basis of a certain sale agreement. The sale agreement *per se* does not create any interest over the land, but only provides a cause for personal action to enforce the contractual obligations of the other contracting parties. Therefore, on the strength of the sale agreement, the plaintiff may not sustain a cause of action for setting aside the sale deed which the first defendant had executed in favour of the second defendant. The second aspect is whether the sale agreement continues to have his force to provide any cause of action to the plaintiff. This is founded on his own admission



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in paragraph No.5 of the plaint, where he admits he has obtained refund of the advance amount, which he had paid the first defendant, from the second defendant.

6. This Court finds considerable force in the submission of the learned counsel. However, given the fact that the plaintiff / first respondent has not entered appearance, this Court considers that it would be appropriate for the revision petitioners to approach the trial Court with an application for the relief they now seek. As and when the revision petitioners approach the trial Court, the learned trial Judge is required to go by the correct principles of law and dispose of the matter in accordance with law, as expeditiously as possible.

7. The revision petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

07.03.2022

ds

Note : Issue order copy on 10.03.2022



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N.SESHASAYEE.J.,

ds

To:

The I Additional District Munsif Court
Coimbatore.

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