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C.R.P.No.2851 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.2851 of 2022
and
C.M.P.No.15427 of 2022

Banumathy Parthasarathy

... Petitioner

VS

1.T.K.S.Pugazhendhi

2.P.Saravanan

3.S.Kamalapriya

4.S.Chella

5.P.V.Suresh

6.K.Kamalakannan

7.P.S.Kanniyan

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order and decretal order of dismissal dated 11.07.2022 in I.A.No.480 of 2021 in O.S.No.260 of 2020 and allow the Civil Revision Petition.

For Petitioner : Mr.M.S.Murali



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For R1 to R3

for R and P Partners

: Mr.N.Ramakrishnan

for M/s.Waron and Sairams

ORDER

The Civil Revision Petition is filed challenging the order passed by the Court below dismissing the petition to reject the plaint filed by the petitioner/6th defendant.

2. The 1st and 2nd respondents/plaintiffs filed a suit for permanent injunction restraining the petitioner and other respondents from alienating and encumbering the suit schedule properties. According to the 1st and 2nd respondents/plaintiffs, there was a oral sale agreement between the petitioner and other respondents in respect of the suit schedule properties. It is also stated that in pursuance of the oral sale agreement, the respondents 1 and 2 paid a sum of Rs.57,35,864/- as advance on various dates. It is also stated that the respondents 1 and 2 had transferred a sum of Rs.85,00,000/- to the account of the 3rd respondent herein and Rs.15,00,000/- to the account of the 4th respondent herein.

3. Thus, it is the claim of the respondents 1 and 2 that they had already



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paid a sum of Rs.1 crore towards total sale consideration of Rs.2.20 crores as fixed in the agreement.

4. The petitioner herein who was arrayed as 6th defendant in the suit filed the instant application in I.A.480 of 2021 seeking rejection of the plaint on the ground that even as per the averments found in the plaint, the oral sale agreement was entered into only with the 5th and 6th respondents herein viz., the 4th and 5th defendants in the suit. It is the case of the revision petitioner that she had never given any authority to respondents 5 and 6 to enter into any kind of sale agreement with the respondents 1 and 2 binding her share in the suit property. It is also stated by the petitioner that she is not aware of any oral agreement of sale entered into by the respondents 5 and 6 with the respondents 1 and 2 binding her share in the suit property. It is also stated by the petitioner in the year 2015, there was a Registered Partition in the family and portion of the suit property had been allotted to her share.

5. In these circumstances, according to the learned counsel for the



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petitioner, the plaint does not disclose any cause of action as against the revision petitioner herein and consequently, the plaint has to be rejected as against the petitioner/6th defendant in the suit. The petition filed by the revision petitioner was dismissed by the Court below on the ground that whether there was a oral sale agreement between the parties as pleaded in the plaint is the matter to be decided at the time of trial and the same cannot be decided while considering the petition for rejection of the plaint. Aggrieved by the same, the petitioner is before this Court.

6. It is settled law that while considering the petition for rejection of the plaint, the Court is concerned with the averments found in the plaint and the plaint documents. In the case on hand, the respondents 1 and 2/plaintiffs had averred in the plaint that there was a oral sale agreement entered by the respondents 5 and 6/male members of the family in respect of the suit schedule property which was joint family properties in the year 2009.

7. Whether there was a oral sale agreement as pleaded by the plaintiff



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or whether that oral sale agreement was made with the authority given by the revision petitioner or not are all the questions to be decided in a full fledged trial. These disputed question of fact cannot be gone into by the Court at the stage of considering the petition to reject the plaint. Therefore, I do not find any error in the order passed by the Court below.

8. Accordingly, the Civil Revision Petition is dismissed. However, taking into consideration the suit is of the year 2020 and the reliefs sought for is only a bare injunction, this Court is inclined to issue a direction to the Court below to dispose of the suit in O.S.No.260 of 2020 as expeditiously as possible in any event within a outer time limit of nine months from the date of receipt of a copy of this order. No costs. Consequently, the connected civil miscellaneous petition is closed.

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Index : Yes / No
Speaking Order : Yes / No
dm



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To

The Additional District Munsif,
Poonamallee.



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S.SOUNTHAR, J.

dm

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