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CRP (PD) No. 4321 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **07.02.2022**

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CRP (PD) No. 4321 of 2017

1. Vaijayanthi
2. S.Nadanapathi ... Petitioners/Plaintiffs/petitioners

Vs

R.S.Senthil Kumar ... Respondent/Defendant/Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order of the District Munsif Court at Mannargudi, dated 24.02.2017 in I.A.No. 603 of 2016 in O.S.No. 07 of 2015.

For Petitioners : No appearance

For Respondent : M/s. P.Vidhyashree
for M/s. P.T.Rama Devi

ORDER



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There is no representation on behalf of the petitioners.

2. A perusal of the Court records reveal that there has been no representation on behalf of the revision petitioners on 08.12.2021, 23.12.2021 and again on 28.01.2022 and the matter had been directed to be posted under the caption 'for dismissal' today.

3. Again there is no representation on behalf of the petitioners herein. It would not be proper on my part to hold this revision petition any further.

4. Heard the learned counsel for the respondent.

5. This Revision Petition has been preferred by the plaintiff in O.S.No. 7 of 2015 now pending on the file of District Munsif at Manargudi. Such suit had been filed seeking permanent injunction. The respondent herein/defendant had entered appearance and written statement had also been



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filed. Issues had also been framed and the trial has also commenced. At that particular stage, the revision petitioners/plaintiffs had filed an Interlocutory application in I.A.No. 603 of 2016 seeking amendment of the plaint. The said application was filed under Order 6 Rule 17 CPC owing to the fact that in the written statement, the revision petitioner/defendant claimed that the property was subject of a sale agreement entered into between the first defendant and the wife of the first defendant.

6. Section 54 of Transfer of property Act, defines a contract of sale and it has been very clearly laid down that a contract of sale does not give rise to any charge or interest over the property.

7. The issue which arises for consideration in a suit for permanent injunction is whether the plaintiffs therein are in possession. The nature or character of the defendants may change. The property could have been dealt with by even an agreement of sale but still, the onus on the plaintiffs to establish possession remains.



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8. That is an issue which can be decided on the basis of the plaintiffs' evidence alone. Therefore, a burden is cast on to the plaintiffs to prove possession. The nature of such proof should not only be admissible in law but should also be based on relevant evidence, documentary and oral.

9. The said Interlocutory Application came to be dismissed by the learned District Munsif, on 24.02.2017. In the order, it had been stated that the Court fees should be paid on the value of the document, if at all the revision petitioner seeks to set aside a document, it cannot be paid under Section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955.

10. It had also been stated that the petitioners herein had knowledge of the agreement of sale and therefore, filing the application after the trial had commenced, was not bona fide in nature and hence on both the grounds, the application was rejected.

11. I find no reason to interfere with that particular order. The



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revision petitioners may concentrate on establishing possession and the fact that except with due process, such possession should not be disturbed.

12. This is an issue which can be examined in the suit. The matter is reverted back to the trial Court. Hence, this Civil Revision Petition stands dismissed. No costs.

13. A direction is issued to the learned Trial Judge/ District Munsif Court, Mannargudi, to dispose of O.S.No.07 of 2015 on or before 31.07.2022.

03.01.2022

vsg

Index: Yes/No

Speaking order / Non speaking order

To:

1. District Munsif Court, Mannargudi.

2. The Section Officer,
VR Section,
Madras High Court, Chennai.

C.V.KARTHIKEYAN, J.



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