



C.R.P.(PD).No.4766 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.12.2021
Pronounced on : 17.02.2022

CORAM

THE HONOURABLE MRS. JUSTICE S. KANNAMMAL

C.R.P.(PD).No.4766 of 2017
and
C.M.P.No.22433 of 2017

P.Palani

.. Petitioner

Versus

K.B.Venkatesan

.. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, for setting aside the fair and decretal order dated 03.07.2017 passed in unnumbered O.S.No....of 2017 in 19 Register No.3090 dated 13.04.2017 on the file of the District Judge, Tiruvannamalai, to number and dispose.

For Petitioner : M/s.S.Suseela Devi
For Respondent : Mr.M.Balamurugan

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 03.07.2017 passed in unnumbered O.S.No....of 2017 in 19 Register No.3090 dated 13.04.2017 on the file of the District Judge, Tiruvannamalai, to number it and dispose of the suit on merits.



C.R.P.(PD).No.4766 of 2017

2. The petitioner herein is the plaintiff. He filed a suit for specific performance against the respondent herein, who is the defendant. An alternative plea for refund of the advance amount was also prayed.

3. The case of the petitioner/plaintiff is that he entered into a sale agreement in respect of the suit schedule property with the respondent/defendant herein on 06.07.2015 for total consideration of Rs.17,00,000/-. On the date of agreement, the petitioner/plaintiff has paid Rs.15,00,000/- to the respondent/defendant as advance and also agreed to pay the balance of sale consideration of Rs.2,00,000/- to the respondent and get the sale deed registered in his favour within twenty one months from the date of the agreement. Within the time prescribed in the agreement of sale, the petitioner/plaintiff approached the respondent/defendant several times and requested him to receive the balance sale consideration and to execute the sale deed in his favour, but the respondent refused to execute the sale deed and also evaded from receiving the balance sale consideration. Therefore, the plaintiff issued a lawyer notice dated 02.02.2017, to the respondent, but he has neither replied nor complied with the demand made by the plaintiff despite receipt of the legal notice. Therefore, finding no alternative, the plaintiff approached the Civil Court and filed the suit.



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4. The learned counsel appearing for the petitioner/plaintiff would submit that the petitioner filed the suit for specific performance against the respondent. Since the respondent has received a huge amount of Rs.15,00,000/- as part sale consideration and evaded to perform his part of contract by receiving balance sale consideration of Rs.2,00,000/- the suit was filed. However, the Court below without entertaining the suit, even at SR stage itself vide order dated 03.07.2017 rejected the plaint on the ground that the agreement of sale contains interpolations in respect of sale price.

5. The learned counsel for the petitioner would further contend that the trial Court cannot suo motu decide the validity or genuineness of the registered document i.e., sale agreement merely it contains some corrections, in the absence of any plea of forgery or fraud made by the respondent/defendant. The Court below has erred in rejecting the plaint without entertaining the same. Therefore, the learned counsel for the petitioner prays this Court to set aside the order and direct the trial Court to take the plaint on file and to proceed for disposal of the same.

6. This Court perused the original sale agreement. As pointed out by



the trial Court there are corrections in the sale consideration amount and the advance amount which was written in ink after erasing. Order 7 Rule 11

C.P.C., deals about Rejection of plaint which reads as follows:

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 under-valued, and the plaintiff, on being required by the Court to so 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 written 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;

[(e)where it is not filed in duplicate;

[(f)where the plaintiff fails to comply with the provisions of rule 9:]]

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers 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-papers, 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.]

Hence, Order 7 Rule 11 C.P.C., provides for rejection of plaint only on the above said defects. The petitioner herein filed a suit for specific performance based on the suit sale agreement. The petitioner has also issued legal notice to the respondent and the petitioner has filed the acknowledgment too for the receipt of notice by the respondent. The trial Court is wrong in rejecting the plaint at the primitive stage warranting interference of this Court.

7. Accordingly, this Civil Revision Petition is dismissed. The trial Court is directed to take the case on file, proceed with the trial and dispose the case on merits as expeditiously as possible. No Costs. Consequently, connected Miscellaneous Petition is closed.

17.02.2022

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Index: Yes/No
Internet: Yes/No

To

The District Judge,
Tiruvannamalai.



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C.R.P.(PD).No.4766 of 2017

S.KANNAMMAL.J.,

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Pre-delivery Judgment in
C.R.P.No.4766 of 2017

17.02.2022



C.R.P.(PD).No.4766 of 2017

CRP (PD) No.4766 of 2017 and
CMP No.22433 of 2017

WEB C **S.KANNAMMAL, J.**

This Civil Revision Petition is listed today under the caption "for being spoken to" in as much as in the operative portion of the order dated 17.02.2022, in paragraph No.7, due to oversight, it was stated as "Accordingly, this Civil Revision Petition is dismissed". But the fact remains that this Court had only set aside the order passed by the trial Court after hearing both sides and therefore para No.7 of the order dated 17.02.2022 passed in the above Civil Revision Petition is deleted and in its place the following paragraph is ordered to be substituted:

“7. Accordingly, this Civil Revision Petition is allowed. ”

2. Further in paragraph No.6 of the order dated 17.02.2022, the following statement is ordered to be incorporated at the beginning:

“6. I have heard the learned counsel appearing on either side”

3. In view of the above, Registry is directed to carry out the above corrections in the order dated 17.02.2022 and issue fresh order copy.

22.02.2022

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C.R.P.(PD).No.4766 of 2017

S.KANNAMMAL, J.

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