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C.M.A.No.1526 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

C.M.A.No.1526 of 2016

S. Hari Prasad

... Appellant / Plaintiff

Vs.

K. Paramasivam

... Respondent/Defendant

Civil Miscellaneous Appeal filed under Order 43 Rule 1 of Civil Procedure Code, against the Fair and Decretal Order dated 29.03.2016 made in I.A.No.1936 of 2015 in O.S.No.243 of 2013 on the file of the I Additional District and Sessions Court, Tiruppur.

For Appellant : Mr. T. M. Hariharan

For Respondent : Mr. R. Prabakar
For NSS. Advocacy LLP

JUDGMENT

The appellant is the plaintiff filed this Civil Miscellaneous Appeal, challenging the fair and decretal order passed in I.A.No.1936 of 2015 in O.S.No.243 of 2013 on the file of the I Additional District and Sessions



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Judge, Tirupur, whereby, the Trial Court has rejected the plaint filed by the appellant herein as per the provisions of Order VII Rule 11(a) of the Code of Civil Procedure.

2. The parties are referred to hereunder according to status and ranking before the trial Court.

3. The brief facts of the plaintiff's case is as follows:

The plaintiff and the defendant have entered into an Agreement for Sale, dated 20.08.2013, whereby, the defendant agreed to sell the suit property for a total Sale Consideration of Rs.15,00,000/- and on the date of agreement, the plaintiff paid Rs.14,50,000/- as advance sale consideration. It is also agreed between them that the balance sale consideration shall be payable within a period of 45 days and that the sale shall be concluded. Subsequently, even though the plaintiff was ready and willing to perform his part contract by paying the balance sale consideration, the defendant has not come forward to sell the property and perform his part of the contract, which forced the plaintiff to file the suit for Specific Performance of contract.



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4. The case of the defendant in brief is as follows:

The plaintiff is a money lender and the defendant has borrowed a sum of Rs.1,00,000/- from the plaintiff and the defendant was asked to subscribe his signatures in various blank papers and stamp papers, as security for loan. By fabricating those documents, the Agreement of Sale has been preferred and the suit has been filed as if, the plaintiff has entered into Agreement of Sale.

5. There is a violation of Section 17(g) and 49 of the Registration Act, which mandates documents including the Agreement of Sale shall compulsorily to be registered and non-compliance makes out the case that there is no cause of action, hence the plaint is to be rejected.

6. After hearing both sides, the Trial Court has taken a view that there is no cause of action and the plaint is liable to be rejected and allowed the Interlocutory Application, consequently, separate Judgment and Decree is passed in the suit.



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7. Aggrieved over the rejection of plaint, the plaintiff herein has filed this Civil Miscellaneous Appeal, challenging the order passed in Interlocutory Application in the suit, thereby, the trial Court has rejected the plaint. The Court has raised an issue of maintainability of appeal, since, the appeal filed under Order 43 of the Code of Civil Procedure Code is invoked instead of filing regular appeal provided under Section 96 r/w Order 4(1) of the Code of Civil Procedure.

8. I have heard both sides.

9. Order VII Rule 11 of the Code of Civil Procedure deals with rejection of plaint. Once the plaint is rejected, then, obviously nothing is pending before the Court. That order is formal expression of an adjudication, which so far as regards the Court expressing it, consecutively determines the rights of the parties. In fact, Section 2(2) of the Code of Civil Procedure which defines the term “decree” specifically states that the decree shall be deemed to include rejection of the plaint. Section 96 of the Code of Civil Procedure deals with appeals from original decrees.



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10. The Trial Court has passed the order rejecting the plaint in the interlocutory application filed in I.A.No.1936 of 2015 in the suit. This Court has had an opportunity to consider the maintainability of Civil Miscellaneous Appeal instead of filing regular Appeal Suit, in ***Govindarajan Padayatchi vs. Premananda Vijayakumar @ Prem Anand and Others*** reported in ***2013 (6) CTC 467 (Mad)*** and it is observed that, instead of passing fair and decreetal order in the Interlocutory Application and again pronouncing Judgment based on the same and drafting a Decree in the suit is not proper and it is held that the trial Court ought to have passed an order in the suit itself. In paragraph No.7 it is observed as follows:

“7. In this regard, this Court wants to point out that Appeals shall lie not against findings, but against the Decree or decreetal orders. Even though the Trial Court might have chosen to pass final order and decreetal order in the Interlocutory Application and consequently, a Judgment referring to the order passed in I.A.No.3 of 2012 on the ground of which the plaint was to be rejected and drafted a Decree on the same lines, this Court finds the very procedure adopted may not be proper, when an order rejecting the plaint is passed either without an Application being filed by the Defendants to the proceedings or on an Application filed by the Defendants. Nonetheless, it is a decision made in the suit that the plant is liable to be rejected on any one of the grounds mentioned in Rule 11 of Order



7, C.P.C. Instead of passing a fair order and a decreetal order in the Interlocutory Application and again pronouncing a Judgment based on same and drafting a Decree in the suit, the Trial Court ought to have passed an order in the suit itself, rejecting the plaint which shall be deemed to be a Decree. Even otherwise, pronouncing Judgment on the basis of the order directing the rejection of plaint and drafting of a Decree are only superfluous, because very order allowing the Application and directing the rejection of the plaint itself shall be deemed to be a Decree as per Order 7, Rule 11, C.P.C.”

11. Further, it is held that, since the order allowing the application for rejection of plaint is deemed to be a decree, regular Appeal under Section 96 r/w Order 41 to be filed.

12. As stated above, the Order rejecting the plaint is deemed to be a decree and same shall be challenged only by filing regular appeal by invoking Section 96 read with Order 41 of the Civil Procedure Code and the same could not be challenged by invoking Order 43 of C.P.C. In this case, the Civil Miscellaneous Appeal is filed by invoking Order 43 of C.P.C which is misconceived and same is not maintainable and is liable to be dismissed. However, the plaintiff is at liberty to file Appeal Suit by raising all the grounds of challenge to the rejection of plaint.



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13. Accordingly, the Civil Miscellaneous Appeal is dismissed, with liberty to the appellant to file Appeal Suit by raising all the grounds available to challenge the order of rejection of plaint. No costs.

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

To

1.The I Additional District and Sessions Judge,
Tirupur.

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



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K.RAJASEKAR,J.

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