



C.R.P.No.4760 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.4760 of 2013
and M.P.No.1 of 2013

- 1.V.Lakshman (died)
- 2.Sheela Indra Mohan (died)
- 3.Manjula Lakshman
- 4.Gokul Lakshman
- 5.Shobana Lakshman
- 6.Dhritimaan Vijaykant Mohan
- 7.Taneesha Devi Mohan
- 8.Kirtimaan Ajaykant Mohan

*(Petitioners 3 to 5 brought on record as
LRS of the deceased 1st petitioner
vide order dated 28.06.2019
made in CMP 13424 of 2019)*

*(Petitioners 6 to 8 brought on record as
LRS of deceased 2nd petitioner
vide order dated 10.07.2023
made in CMP 10612 of 2020)*

.. Petitioners

VS

R.Muthu

.. Respondent

Petition filed under Section 115 CPC to set aside the order and decretal order in I.A.No.672 of 2013 in O.S.No.7 of 2013 on the file of Principal District Munsif, Poonamallee dated 26.09.2013.

For Petitioners : Mr.V.Nandakumar

For Respondent : Mr.K.Dhananjayan



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ORDER

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This revision arises against I.A.No.672 of 2013 in O.S.No.7 of 2013. The suit is for specific performance of an agreement to sell the mentioned suit schedule property.

2. Previously, parties had litigated by presenting a plaint in O.S.No.350 of 1994. The said suit was for bare injunction. In that suit, the plea of the plaintiff, who was also the plaintiff in that suit was that the civil revision petitioner was not the owner of the property and that he had purchased the same from one Durairaj on 19.09.1991. The suit was dismissed. The appeal suit was allowed. The second appeal therefore was allowed. In fine, the suit for injunction stood dismissed. The present plaint also reads that on 21.12.2012, the plaintiff had approached the defendant in the present suit to alienate the property for a sum of Rs.4,000/-. It is his case that the civil revision petitioner / defendant had agreed to alienate the property for the said sum and had thereafter referred to execute the sale. Hence the suit for specific performance.

3. Mr.V.Nandakumar, learned counsel for the petitioner, would vehemently contend that the cause of action is illusory and



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the defendant had never agreed to sell the property for a sum of Rs.4,000/-.

4. Whether the plaintiff and defendant had entered into an agreement and whether the defendant received consideration of Rs.4,000/- are triable issues. They do not fall within the four corners of Order 7 Rule 11 CPC. While dealing with an application for rejection of plaint, this Court has to take the averments made in the plaint as true and genuine. It is a plea in demurrer. That plea in demurrer implies that the Court looks only into the plaint and the plaint documents alone. Paragraph 14 of the plaint reads that the plaintiff had given a sum of Rs.4,000/- on 03.12.2012 to the defendant and the defendant had also agreed to alienate the same.

5. I am not going into the truth or veracity of the averments as I cannot do so. The same has to be brought out only at the time of the trial. Further, the argument that the suit is hit by Order II Rule 2 CPC also does not appeal to me. This is because as the cause of action that is pleaded is subsequent to the cause of action in O.S.No.350 of 1994. O.S.No.350 of 1994 was predicated only on the basis of settled possession. In that suit, he had disputed the title of the defendant. In the present suit, he concedes to the



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title of the defendant and pleads that parties had subsequently entered into a sale agreement. The cause of action for the suit for injunction and the cause of action for the present suit for specific performance are different. Therefore, the suit is not hit by Order 2 Rule 2 of CPC. The finding rendered by me is only with respect to dealing with rejection of plaint and I have not gone into the merits of the case. I confine myself to the statement made in the plaint alone. Therefore, the order of the trial Court in rejecting the application under Order VII Rule 11 CPC is confirmed. The Civil Revision Petition is dismissed. No costs. Connected miscellaneous petition is closed.

6. The suit being of the year 2013, the learned Principal District Munsif, Poonamallee, is requested to give priority to the case and dispose it of on or before 28.02.2024.

10.07.2023

Index:Yes/No
Neutral Citation:Yes/No
ssm

To

The Principal District Munsif,
Poonamallee.



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V. LAKSHMINARAYANAN,J.

ssm

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