



C.R.PD.No.1411 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 7/6/2023

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Civil Revision Petition PD No.1411 of 2023

a n d

C.M.P.No.9513 of 2023

U. Shoban Kumar

...

Petitioner

Vs

1. A. Karunakaran

2. A. Sumitra

3. A. Lakshmanan

...

Respondents

Prayer: Petition filed under Article 227 of the Constitution of India to set aside the order, dated 10/2/2023 made in un-numbered Suit bearing O.S.SR.No.27000 of 2022 on the file of I Additional City Civil Court, Chennai and consequently, direct the suit to be taken on file and proceeded with in accordance with law.

For Petitioner

...

Mr.R.Parthasarathy
Sr. Advocate

- - - - -



C.R.PD.No.1411 of 2023

WEB COPY

ORDER

This Civil Revision Petition is filed, to set aside the order, dated 10/2/2023 made in un-numbered Suit, bearing O.S.SR.No.27000 of 2022, on the file of I Additional City Civil Court, Chennai, and consequently, direct the suit to be taken on file and proceeded with, in accordance with law.

2. Brief facts in a nutshell are as follows:-

When O.S.S.R.No.27000 of 2022 is presented for registration before the learned I Additional City Civil Court, Chennai, it was not registered, on the ground that the petitioner has not sought for relief of possession, and that the property in respect of which suit is filed is not situated in the territorial jurisdiction of the learned Judge and thereby, returned with an objection that the Court has no territorial jurisdiction. Being aggrieved by the same, this Civil Revision Petition is filed.

3. Learned counsel for the petitioner has submitted that the petitioner has not filed the suit for recovery of possession or for a declaration of title



C.R.PD.No.1411 of 2023

and thereby, the question as to where the property involved in the specific performance of agreement of sale cannot be looked into.

4. Heard Mr.R.Parthasarathy, Sr. Advocate, for the learned counsel for the petitioner.

5. The petitioner has filed O.S.SR.No.17000 of 2022 for the following reliefs:-

- (i) to direct the respondents to receive the balance sale consideration
- (ii) in case if the specific performance of agreement of sale, dated 16/3/2015, cannot be granted, to direct the defendant to pay Rs.29 lakhs along with interest, at the rate of 15%.
- (iii) for a Permanent injunction restraining the defendants from alienating the suit schedule property.
- (iv). To declare that general Power of Attorney dated 9/5/2022 in Document No.1811 of 2022 is not binding on the plaintiff.

6. The learned Judge in the impugned order has mentioned that though the relief of recovery of possession is not sought for by the



C.R.PD.No.1411 of 2023

plaintiff in the suit, the relief in respect of execution of registered sale deed also implies delivery of possession. It is also observed that under Section 55 (1) of The Transfer of Property Act, the relief of possession is inherent to the relief of specific performance and thereby, the suit of the plaintiff is covered under clause (d) of Section 16 of the Code, thereby, the suit is to be termed as a suit pertaining to immovable property, thereby, the District Court at Chennai lacks the territorial jurisdiction. This view of the learned District Judge is in correct.

7. On going through the reliefs sought for, it is clear that the plaintiff has filed a suit for specific performance of agreement of sale dated 16.3.2015, rest of the three prayers are consequential to the first relief. The plaintiff did not seek for either declaration of title or recovery of possession. Therefore, though the property involved in the agreement of sale is an immovable property situated outside the territorial jurisdiction of the Court, the relief sought for is not directly in respect of the immovable property but for a direction to the defendant to execute the registered sale deed. Admittedly, the cause of action arose in Chennai and parties are also residing in Chennai. Therefore, as long as the plaintiff has not been seeking any relief in respect of the land involving



C.R.PPD.No.1411 of 2023

the agreement of sale, the District Court should not have taken a view that it does not have a territorial jurisdiction.

8. In *ADCON ELECTRONICS PVT. LTD Vs. DAULAT AND ANOTHER (2001) 7 SUPREME COURT CASES 698*, the Hon'ble Supreme Court has held as follows:-

“15. From the above discussion it follows that a “suit for land” is a suit in which the relief claimed relates to title to or delivery of possession of land or immovable property. Whether a suit is a “suit for land” or not has to be determined on the averments in the plaint with reference to the reliefs claimed therein; where the relief relates to adjudication of title to land or immovable property or delivery of possession of the land or immovable property, it will be a “suit for land”. We are in respectful agreement with the view expressed by Mahajan, J. in *Moolji Jaitha case* [AIR 1950 FC 83 : 1949 FCR 849] .



WEB COPY



C.R.PD.No.1411 of 2023

16. In a suit for specific performance of contract for sale of immovable property containing a stipulation that on execution of the sale deed the possession of the immovable property will be handed over to the purchaser, it is implied that delivery of possession of the immovable property is part of the decree of specific performance of contract. But in this connection it is necessary to refer to Section 22 of the Specific Relief Act, 1963 which runs:

“22. Power to grant relief for possession, partition, refund of earnest money, etc.—(1)

Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908, any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for—



WEB COPY



C.R.P.PD.No.1411 of 2023

(a) possession, or partition and separate possession, of the property, in addition to such performance; or
(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or made by him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed:

Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.”

17. It may be seen that sub-section (1) is an enabling provision. A plaintiff in a suit of specific



WEB COPY



C.R.PD.No.1411 of 2023

performance may ask for further reliefs mentioned in clauses (a) and (b) thereof. Clause (a) contains reliefs of possession and partition and separate possession of the property, in addition to specific performance. The mandate of sub-section (2) of Section 22 is that no relief under clauses (a) and (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed. Thus it follows that no court can grant the relief of possession of land or other immovable property, subject-matter of the agreement for sale in regard to which specific performance is claimed, unless the possession of the immovable property is specifically prayed for.

18. In the instant case the suit is for specific performance of the agreement for sale of the suit property wherein relief of delivery of the suit property has not been specifically claimed, as such it cannot be treated as a “suit for land”.

9. ***In A.C.SUBBA REDDY Vs. JAWAHAR INTERNATIONAL***



C.R.PD.No.1411 of 2023

TRADING CORPORATION COMPANY, rep. By its MANAGING

PARTNER AND OTHERS 2008 (4) CTC 160, it is held that

“3. The Suit has been filed by the appellant/plaintiff for the following reliefs:

(a) directing the defendants 1 to 5 specifically perform their part of the obligations of the agreement for sale dated 5.3.2004 as merged in supplemental agreement dated 25.2.2005 by executing and registering sale deed or deeds in respect of the suit property and register the name on receipt of the balance sale consideration of Rs. 5.35 lakhs on a date to be fixed by this Hon'ble Court and in default direct the Court to execute and register the deed or deeds of sale in respect of the Plaint schedule property in favour of the plaintiff at the expense of the plaintiff on deposit of the balance



WEB COPY



C.R.PD.No.1411 of 2023

sale consideration payable by him to the credit of the Suit or in the alternative direct the refund of the advance amount of Rs. 5,35,000/- paid by the plaintiff with interest at 24% per annum from the date of payment till the date of realization;

(b) For a permanent injunction restraining the defendants 1 to 6 or their men, agents, servants or any person or claim through them or authorized by them from interfering with the peaceful possession and enjoyment of the property, more fully described in the schedule hereunder;

(c) For a permanent injunction restraining the defendants 1 to 6 or any other person or persons claiming through them from alienating or encumbering dealing with the suit schedule mentioned property either by way of sale, mortgage, joint development lease or in any other manner detrimental to the interest of the plaintiff except in accordance with law.”



WEB COPY



C.R.PD.No.1411 of 2023

4. If we look at the prayer “a” and “c” alone, it is clear that principally the Suit is for specific performance of the agreement and even the ancillary relief of permanent injunction is also for restraining defendants from alienating or dealing with the suit property in any way. Prayers “a” and “c” are not for title or possession and the injunction relief sought for also does not affect the title or possession.”

10. On considering the above, it is clear that the suit for specific performance of agreement of sale is not a “suit for land”, even though the relief of recovery of possession is consequential or inherent. Therefore, the question whether the property situated outside Chennai will not in any way disentitle the Additional District Judge, Chennai to entertain the suit on the ground that it lacks territorial jurisdiction.

11. In view of the above, this **Civil Revision Petition is allowed.** The learned District Judge is directed to receive the suit, number and dispose of the same and proceed in accordance with law. No costs.



C.R.P.D.No.1411 of 2023

Consequently, the connected Civil Miscellaneous Petition is closed.

WEB COPY

7/6/2023

Index :yes/no

Neutral Citation: Yes/No

mvs.

Dr.D.NAGARJUN,J

mvs.

Note: Registry is directed to return the original copy of S.R.No.27000 of 2022, to the counsel for the petitioner, after replacing the same with xerox copies.

To

1. I Additional City Civil Court, Chennai

C.R.P.D.No.1411 of 2023



WEB COPY



C.R.PD.No.1411 of 2023

7/6/23