



WEB COPY



CRP No.1651 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.03.2023

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Civil Revision Petition No. 1651 of 2020

and

C.M.P.No.10159 of 2020

J. Palanisamy

... Petitioner

Versus

M.S. Mohanasundaram

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the plaint docket order dated 22.07.2020 passed in unnumbered O.S.SR.No.Nil of 2020 on the file of District Munsiff Court at Sriperumbudur and consequently to direct the District Munsiff Court at Sriperumbudur to take the plaint on file and proceed further accordance with law.

For Petitioner	:	Mr. D. Senthilkumar
For Respondent	:	Mr. Mitranesher for Ms.V. Srimathi

ORDER

This Civil Revision Petition has been filed by the Petitioner aggrieved by the order dated 22.07.2020 passed in unnumbered O.S. SR. No. Nil of 2020 on the file of District Munsiff Court at Sriperumbudur and consequently to direct the District Munsiff Court at Sriperumbudur to take the plaint on file and proceed further in accordance with law.



2. Learned Counsel for the Revision Petitioner would submit that the Revision Petitioner, as Plaintiff, filed the plaint for the relief of bare injunction restraining the Respondent/Defendant from encumbering / alienating the suit property. According to the Plaintiff-Revision Petitioner, the Respondent/Defendant was the owner of the suit property and he agreed to sell it to the Plaintiff-Revision Petitioner on 12.06.2019 and received a sum of Rs.8 lakhs as advance out of the total sale consideration of Rs.2.32 crores. As per the agreement, the Plaintiff-Revision Petitioner called upon the Respondent-Defendant on 24.03.2020 and expressed his readiness and willingness to perform his part of the contract by paying the balance sale consideration, but the Respondent-Defendant evaded and avoided to perform his part of the contract. The Respondent/Defendant, contrary to his assurance and undertaking, made attempts to alienate the suit property to some third parties on 07.06.2020. Hence, he filed the suit. However, the plaint was returned by the Court below for some reasons and they were complied with by the Plaintiff-Revision Petitioner, as follows:-

“Return reason (1) has complied as follows:

(i) The suit is filed for permanent injunction against the defendants in relate to the suit property. The cause of action also arises. This plaintiff is entitles to his claim. The plaintiff also averred that he reserved his right to file a suit



for specific performance of agreement against the defendant. It is the cause of action which is material to determine to pray for permanent injunction also with leave to sue petition under Order 11 Rule 2 CPC. For these reasons, it is necessary for the plaintiff to obtain leave from the Court as provided in Order 11 Rule 2 of CPC and for filing this suit is settled principle of law. Hence, without seeking specific relief the plaintiff has to file this suit for permanent injunction is maintainable. Hence, complied.

(ii) Document No.2 is an agreement of sale. An agreement to sell is not required to be registered. The words expressly supersede under the proviso added to Sec.49 of the Registration Act, 1908, unregistered documents are admissible as evidence. However, there is a contrary ruling from the Hon'ble Punjab and Haryana High Court that, the Court has held that as an Agreement to Sell does not create any right or title to the property and it is a sale deed which when executed will create a right, title or interest in the property. Hence, an Agreement to sell is not required to be registered and the same is admissible in evidence in a suit for specific performance of the contract. This ruling stands in sharp contrast to the amendment of 2001 of the Registration and other Related Laws (Amendment) Act, 2001 (Sukhwinder Kaur v Amarjeet Singh, AIR 2012). Hence, Doc.No.2 is maintainable. Hence, complied.

(iii) Firka name has mentioned in the Cause of



CRP No.1651 of 2020

action. Hence, complied.

(iv) Counsel mobile number mentioned in Vakalat.

Hence, complied.

(v) Memo of Valuation correctly filed. Hence, complied.

(vi) Complaint prayer correctly mentioned. Hence, complied.

Return reason (2)

Court Fee paid in triplicate challan through SBI, Chengalpattu. Hence, complied.”

Notwithstanding the compliance of the returns made by the Registry, when the complaint was placed before the learned Judge, on 22.07.2020 it was returned as not maintainable. Hence, this Revision Petition.

3. The learned Counsel for the Revision Petitioner invited the attention of this Court to the decision in the case of ***S. Kalavathi Vs. V.R.Somasundaram in Civil Appeal No.3192 of 2010*** and in the case of ***K.Rangamsamy Vs. A.Shanmugam & others in CRP NPD No.3799 of 2016*** and submitted that an unregistered agreement of sale is not a bar for institution of the suit. He also submitted that the learned Judge, at the threshold, refused to entertain the suit filed by the Plaintiff for bare injunction by returning it as not maintainable. The learned Judge did not take note of the fact that as per



CRP No.1651 of 2020

Section 17 of the Registration Act, an agreement for sale need not be registered. In any event, only after numbering the suit, the Respondent-Defendant will be in a position to state as to whether he had in fact entered into an agreement and received part of the sale consideration or not. Thus, even without numbering the suit, returning it as not maintainable calls for interference by this Court.

4. Per contra, the learned Counsel for the Respondent submitted that the suit itself is not maintainable for bare injunction. If at all, the Plaintiff-Revision Petitioner ought to have instituted the suit for specific performance of the alleged contract. When there is a cause of action available for the Plaintiff-Revision Petitioner, to institute a suit for specific performance, the present suit for the relief of bare injunction is not maintainable. Further, as per the unregistered agreement, the Plaintiff-Revision Petitioner is expected to perform his part of the contract, within a period of one year, but he failed to do so. Therefore, even the suit for bare injunction is filed beyond the period of limitation. Further, before instituting the suit, the Plaintiff-Revision Petitioner did not issue a lawyer's notice which is one of the pre-conditions for instituting the suit. The Plaintiff-Revision Petitioner has not produced any proof to show his willingness and readiness to proceed with the purchase of the property.



CRP No.1651 of 2020

The property in question is a worth several crores but what was paid by the Revision Petitioner / Plaintiff to the Respondent-Defendant is only a pittance of Rs.8 lakhs. Further, the possession of the suit property continued to remain with the owner/Defendant. While so, an injunction cannot be granted against a true owner. If the intention of the Revision Petitioner, as Plaintiff was bonafide, he ought to have filed suit for specific performance after issuing the lawyer's notice. Therefore, the learned Counsel for the Respondent prayed for dismissal of the Civil Revision Petition.

5. Heard the learned Counsel for the Petitioner as well as the Respondent and perused the materials placed.

6. The Plaintiff has filed a suit simplicitor for bare injunction restraining the owner of the land from alienating or encumbering the suit property to any third parties. According to the Plaintiff-Revision Petitioner, he had entered into an unregistered agreement with the Respondent-Defendant for purchasing the suit property and paid Rs.8 lakhs out of the total sale consideration of Rs.2.32 crores. It is the contention of the Plaintiff-Revision Petitioner that the Respondent-Defendant refused to perform his part of the contract. Therefore, he has filed the suit for bare injunction. If it is so, the



CRP No.1651 of 2020

Plaintiff-Revision petitioner ought to have filed a suit for specific performance and a suit simplicitor for bare injunction is not maintainable. When cause of action is very much available to file a suit for specific performance, the present suit for a bare injunction, based on an unregistered agreement of sale is not maintainable and it is hit by the provisions of Order II Rule 2 of CPC. Merely because the Plaintiff-Revision Petitioner, in the plaint, reserved his right to file a comprehensive suit for specific performance later, it will not cure the defect. Further, when the possession of the suit property continued to remain with the Respondent / Defendant, an injunction cannot be granted at the instance of the Petitioner / Plaintiff against the true owner. Therefore also, this Court is of the opinion that the suit, as filed by the Plaintiff as Revision Petitioner, is not maintainable.

7. As rightly pointed out by the learned Counsel for the Respondent, before instituting a suit of this nature, the Plaintiff-Revision Petitioner ought to have issued a notice calling upon the Respondent-Defendant to act upon the so-called unregistered agreement for sale and only on his refusal the question of instituting a suit will arise. In the present case, even without issuing a lawyer's notice, straightaway, the Plaintiff as Revision Petitioner has filed the suit and it is not maintainable. On the whole, the trial Court is wholly justified



CRP No.1651 of 2020

in returning the plaint as not maintainable by citing the unregistered agreement of sale said to have been entered into by the Plaintiff-Revision Petitioner with the Respondent- Defendant. As per the amendment made to the Specific Relief Act, an agreement for sale has to be necessarily registered. In the present case, the Plaintiff-Revision Petitioner has come forward with the suit wholly on the basis of an unregistered agreement of sale, which will not confer him any cause of action to institute the suit. In such circumstances, this Court is not inclined to exercise the powers under Article 227 of the Constitution of India. The learned District Munsif is wholly justified in returning the plaint filed by the Plaintiff-Revision Petitioner.

8. Accordingly, the Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

14.03.2023

Index: Yes/No

Neutral Citation: Yes/No

AT

To

1.The Sessions (Fast Track Mahila) Judge, Namakkal

2.The Section Officer,

V.R.Section, High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J.

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