



CRP.No.2391 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.2391 of 2017 and
CMP.No.11513 of 2017

1.C.Saraswathi
2.M.Chinnaraj

... petitioners

Vs.

1.P.S.Saravanan

2.Indian Overseas Bank rep. by its
Branch Manager,
Edayarpalayam Branch,
Edayarpalayam,
Coimbatore 641 025

... Respondents

PRAYER:

Civil Revision Petition filed under Section 115 of CPC to revise and set aside the order dated 27.04.2017 passed in IA.No.1521 of 2016 in OS.No.860 of 2014 by the I Additional District Munsif, Coimbatore.

For Petitioners : Mr.T.Ayyasamy

For Respondents

For R1 : Mrs.Usha
for Mr.Vasudevan

For R2 : No appearance



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ORDER

This civil revision petition has been filed to set aside the order dated 27.04.2017 passed in IA.No.1521 of 2016 in OS.No.860 of 2014 by the I Additional District Munsif, Coimbatore, thereby dismissed the petition for rejection of plaint filed under Order VII Rule 11 of CPC.

2. Heard, the learned counsel for the petitioners and the learned counsel for the first respondent.

3. The petitioners are defendants 1 & 2 in the suit filed by the first respondent for mandatory injunction restraining them from creating any cloud over the title of the suit property till the agreement dated 05.11.2008 with the first respondent is cancelled as per law or acted upon it by the first defendant. The case of the first respondent is that the petitioners herein approached the first respondent to sell the suit property along with another property. Both agreed and entered into an agreement for sale on 05.11.2008. As per the agreement, the sale consideration was fixed at Rs.15,00,000/- and the first petitioner received a sum of Rs.5,00,000/- from the first respondent on 05.11.2008. Subsequently, she received a further sum of Rs.10,00,000/- and also made endorsement on 19.12.2008 to that effect. Thus, the first respondent had paid the entire advance amount of Rs.15,00,000/- to



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purchase the suit property. However, the first petitioner failed to come forward to execution of the sale or to enter into the proposed sale agreement. They informed that they would sell the properties and share the profits with the first respondent. Thereafter, they also paid a sum of Rs.8,00,000/- to the first respondent at various periods. Thereafter, they stopped payment and also did not come forward either to proceed with the said agreement or to cancel it. After causing statutory notice, the first respondent filed suit.

4. While pending the suit, the petitioners filed application for rejection of plaint on the ground that based upon the receipt dated 05.11.2008, the first respondent filed suit. The first respondent failed to file a suit for alleged breach of contract dated 05.11.2008. Instead of that, he filed suit for mandatory injunction restraining the petitioners from creating any cloud over the suit property. Such a prayer is also hit and prohibited in the Specific Relief Act under Section 41(h) and (i) since the petitioners have every right to deal with the property. There is no agreement to sell the property between the parties. There is no agreement between them with regards to fixation of price of the suit property. There is no time limit for even specific performance. However, it was dismissed for the reason that the provisions under Section 41(h) of the Specific Relief Act would not be attracted



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since the averments made in the plaint are mixed question of law and fact and it has to be gone into by fullfledged trial.

5. The only point for consideration is that whether the suit is maintainable or not? Under Section 41(h) of the Specific Relief Act, an injunction cannot be granted “when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust”.

6. This court held in the case of ***K.S.Balasubramanian Vs. S.Munuswamy*** reported in ***2000 (II) CTC 417*** referring the judgment of the Hon'ble Supreme Court of India in the case of ***Delhi Municipality Vs. Suresh Chandra*** reported in ***AIR 1976 SC 2621***, that an injunction, which is a discretionary equitable relief, cannot be granted when an equally efficacious relief is obtainable in any other usual mode or poceeding except in cases of breach of trust. The usual mode of proceeding obviously is a suit for specific performance of contract and necessary relief can be obtained through such suit. In this view of the matter, in this suit for perpetual injunction only, no relief of injunction can be granted, much less the temporary injunction sought for. Further held that in the case of perpetual injunction, provisions of Section 38 of the Specific Relief Act provide for the same. Section 38 of the Act also will have to be considered along with



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Section 41 of the Act. While considering the grant of temporary injunction, if the court feels that *prima facie*, suit itself is not maintainable since decree for permanent injunction cannot be granted in view of the bar under Section 41(h) of the Act, it cannot be said that the plaintiff has got a *prima facie* case.

7. On perusal of the plaint, revealed that the petitioners had executed receipt for a sum of Rs.5,00,000/- for the purpose of execution of agreement for sale within a period of 15 days. Further averred that subsequently, the first respondent also paid the remaining amount of Rs.10,00,000/-. However, the first respondent herein failed to come forward to execute sale or execution of any agreement for sale. Thereafter, they also returned a sum of Rs.8,00,000/- and failed to pay the balance amount or failed to proceed with the agreement or to cancel the same. Therefore, the first respondent cannot maintain suit for specific performance. However, the first respondent approached for the following relief:

“pass a decree of mandatory injunction against the defendants restraining them from creating any cloud over the title of the suit property till the agreement dated 05.11.2008 with the plaintiff is cancelled as per law or acted upon it, by defendant No.1”

8. In the light of the principles of law laid down by the Hon'ble Supreme Court of India and keeping in view of Section 38 r/w Section 41(h) of the Specific



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Relief Act, 1963, the first respondent filed suit for mandatory injunction on the basis of the receipt dated 05.11.2008. Therefore, the suit itself is not maintainable since mandatory injunction cannot be granted in view of the bar under Section 41(h) of the Specific Relief Act. Further, the underlying object of Order VII Rule 11 of CPC is that when a plaint does not disclose a cause of action, the court would not permit the plaintiff to unnecessarily protract the proceedings. In such a case, it will be necessary to put an end to the sham litigation so that further judicial time is not wasted. In the case on hand, the relief sought for in the plaint cannot be granted and it is liable to be rejected.

9. In view of the above, the order dated 27.04.2017 passed in IA.No.1521 of 2016 in OS.No.860 of 2014 by the I Additional District Munsif, Coimbatore is set aside and this civil revision petition is allowed. As such, the plaint in OS.No.860 of 2014 on the file of the I Additional District Munsif, Coimbatore is rejected. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Speaking/non-speaking
Index : Yes/No
Internet : Yes
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G.K.ILANTHIRAIYAN, J.

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To

The I Additional District Munsif,
Coimbatore

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