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CRP No.591 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :31.08.2023

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

Civil Revision Petition No.591 of 2023

1.J.Rajkumar Balsingh
2.Sanjay A, Wadhwa

... Petitioners

Versus

1.C.Vaikunta Raja
2.Shoba Raja
3.T.Balan
4.Ajitha Balan

...Respondents

Civil Revision Petition filed Under Article 227 of Constitution of India, praying to set aside the order dated 10.10.2022 passed in O.S.Sr.No.7974 of 2022 by the learned Sub-ordinate Judge, Poonamallee.

For Petitioners : Mr.L.Dhamodharan

ORDER

The petitioners have filed this Civil revision petition to set aside the order dated 10.10.2022 passed in O.S.Sr.No.7974 of 2022 by the learned Sub-ordinate Judge, Poonamallee.

2. Heard, Mr. L.Dhamodharan, learned counsel for the petitioners and perused the materials available on record.



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3. The petitioners herein are the plaintiffs in the unnumbered suit , in O.S. Sr. No. 7974 of 2022. They have filed the said suit for the relief of permanent injunction, before the learned Sub-ordinate Judge, Poonamallee. After presentation, the plaint was returned by the learned trial Judge by holding that the plaintiffs have valued the relief of permanent injunction at Rs.1,01,000/- under Section 27(c) of Tamil Nadu Court Fee and Suit Valuation Act and has paid Rs.3,030/- as Court fee and in order to invoke the pecuniary jurisdiction of the Court the Court fee paid is improper. It was also stated that for the relief claimed by the plaintiffs in respect of B-Scheduled property, as per the plaint averments, the pecuniary value to be determined comes around Rs.28,50,000/- as on 13.12.2004. So the plaintiffs ought to have valued the plaint based on the valuation of the property as on date, instead, they have valued it for Rs.1,01,000/- and it is nothing but abusing the process of law. Accordingly, the plaint was returned with a direction to pay appropriate Court fee. Challenging the said docket order the plaintiffs have preferred this revision.

4. The learned counsel for the revision petitioners submitted that the learned trial Judge failed to take note of the fact that the suit is filed for the relief of permanent injunction and not for declaration and therefore, the



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payment of Court fee on the valuation of the property will not arise. The substance of the relief against the defendants is for a permanent injunction to restrain them from interfering with the peaceful possession and enjoyment of the plaint schedule property and therefore, the Court fee paid under Section 27(c) of Tamil Nadu Court Fee Act, as such is valid and proper. But the learned trial Judge compared the suit filed by the defendants in O.S. No.362 of 2019, on the file of the District Munsif Court, Ambattur, which is no way connected with the present relief claim by the plaintiffs. The learned trial Judge, without following the guidelines framed in the batch of cases in CRP. MD. Nos. 950, 943, 967, 991 and 330 of 2020 dated 16.07.2021 failed to entertain the suit, refused to number it and returned the plaint as such the order passed by the learned trial Judge is unfair and it is liable to be set aside.

5. Considering the above submissions of the counsel for the petitioners, the materials placed were perused. The fact remains that the plaintiffs are renowned builders carrying business in partnership by the name M/s.Golden Ventures. In the course of business they have entered into agreement with the defendants who are the owners of 2.41 acres of land comprised in Nolambur Village, Ambattur Taluk, North Chennai. The Plaintiffs and defendants have entered in to an agreement of sale for joint



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Development on 25.07.2003. As per the terms of agreement, 60% of the share in A-Schedule property along with additional built up area approved by the CMDA shall be given to the builders. It is stated that the defendants did not reveal the litigation in respect of the A-Scheduled property and they have entered into another Joint Development agreement on 21.01.2006 and received part of the advance amount of Rs.1,18,00,000/-. On the other hand, the plaintiffs have paid a sum of Rs.36,63,000/- as charges to the CMDA, for commencement of construction activity. At this stage, the legal heirs of the defendants instituted the suit proceedings and obstructed the commencement of the project. Due to the pendency of the suit proceedings, the plaintiffs were unable to construct the flats and obtain CMDA approval for the remaining 67 cents of the scheduled mentioned property. In the mean while, one M/s.Maas Real World Real Estate Company, Dubai, had consented to purchase the subject property, for execution of the sale deed in respect of the 60% share morefully described in the B-Scheduled property for that the defendants refused. Hence, the plaintiffs have filed the suit for permanent injunction restraining the defendants, their agent, men, servants, sub-ordinates or persons claiming from them from interfering with the 60% of the undivided share of land admeasuring 2.41 acres comprised in Nolambur Village, Ambattur Taluk, North Chennai, as described in the B-Scheduled property of the plaint.



6. On bare perusal of the plaint averments it reveals that the plaintiffs, as builder, entered into Joint Ventures agreement along with the agreement for sale with the owners namely defendants. As per the terms, the plaintiffs claim 60% undivided share of land in the property and entitled to nominate any party for sale. At this stage, the legal heirs of the defendants initiate other litigation and the dispute had widened among them.

7. As per the contention of the plaintiffs the defendants have not agreed to sell the 60% of the undivided share to 3rd parties. So, the entire dispute arose on the basis of the agreement of sale along with Joint Venture agreement. So the plaintiffs ought to have filed a suit to enforce the terms of the agreement instead of that, they filed the suit simplicitor for bare injunction by under valuing the plaint for Rs.1,01,000/- but indirectly claiming the relief, in respect of B-Scheduled property which they ought to have claimed as a consequential relief in the suit for enforcement of the terms. The plaintiffs have indirectly filed the suit for permanent injunction, not to cause interference in respect of 60% of undivided share of land belongs to the defendants as such the suit as filed is not maintainable. The relief in the plaint denotes that the plaintiffs wants to sell 60% of undivided share of land in the property shown as B-Schedule to third parties. Thus, it is a clear case of violation of agreement



terms. As per the plaint averments the relief claimed by the plaintiffs is in respect of B-Scheduled property and therefore, they ought to have valued it based on the land value or as per the terms of the agreement and not by paying Court fee paid under Section 27(c) of Tamil Nadu Court Fee and Suit Valuation Act at Rs.1,01,000/-. The learned trial Judge has rightly returned the plaint by not accepting the valuation, as such it needs, no interference by this Court.

8. Order XXVII Rule 1 reads as follows:

"27. Suit for injunction- In a suit for injunction-

(a) Where the relief sought is with reference to any immovable property, and

(i) Where the plaintiff alleges that his title to the property is denied, or

(ii) Where an issue is framed regarding the plaintiff's title to the property,

fee shall be computed on one-half of the market value of the property or on [rupees seven hundred and fifty], whichever is higher;

(b) where the prayer relates to the plaintiff's exclusive right to use, sell, print or exhibit any mark, name, book, picture, design or other thing and is based on an infringement of such exclusive right, fee shall be computed on the amount at which the relief sought is valued in the plaint or on [rupees two



thousand], whichever is higher;

(c) in any other case, where the subject-matter of the suit has a market value or not, fee shall be computed on the amount at which the relief sought is valued in the plaint or on [rupees one thousand], which ever is higher."

9. In support of his contention, the learned counsel for the revision petitioners submitted the following authorities in 2001(4) CTC 764, Kamaleshwar Kishore Singh vs. Paras Nath Singh & Ors., in which it was held as follows:

"8. It is well settled that the Court fee has to be paid on the plaint as framed and not on the plaint, as it ought to have been framed unless by astuteness employed in drafting the plaint the plaintiff has attempted at evading payment of Court fee or unless there be a provision of law requiring the plaintiff to value the suit and pay the Court fee in a manner other than the one adopted by the plaintiff. The Court shall begin with an assumption, for the purpose of determining the Court fees payable on plaint, that the averments made therein by the plaintiffs are correct. Yet, an arbitrary of the suit property having no basis at all for such valuation and made so as to evade payment of Court fees and fixed for the purpose of conferring jurisdiction on some Court which it does not have, or depriving the Court of jurisdiction on some Court which it does not have, or depriving the Court of jurisdiction which it would



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otherwise have, can also be interfered with by the Court. It is the substance of the relief sought for and not the form which will be determinative of the valuation and payment of Court fee. The defence taken in the written statement may not be relevant for the purpose of deciding the payment of Court fee by the plaintiff. If the plaintiff is ultimately found to have omitted to seek an essential relief which he ought to have prayed for, and without which the relief sought for in the plaint was framed and filed cannot be allowed to him, the plaintiff shall have to suffer the dismissal of the suit."

The following authority relied by the learned counsel for the petitioners not apply to the facts of the case.

10. Accordingly, the Civil Revision Petition is dismissed as devoid of merits and the findings given by the learned Sub-ordinate Judge, Poonamallee in O.S.Sr.No.7974 of 2022, order dated 10.10.2022 is confirmed. No costs.

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Index : Yes/No
Speaking/Non Speaking order
Neutral Citation:Yes/No
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- To
- 1.The Sub-ordinate Judge, Poonamallee.
 - 2.The Section Officer,
VR-Section, High Court of Madras.



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T.V.THAMILSELVI, J.

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