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CRP.Nos.3008 of 2018, etc

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2023

CORAM:

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

CRP.Nos.3008 of 2018, 1806 of 2019, 1265 & 1266 of 2020
and CMP.Nos.17433 of 2018, 11856 of 2019 & 6867 of 2020

CRP.No.3008 of 2018

S.Rajathi

... petitioner

Vs.

R.Balamurugan

... Respondent

PRAYER:

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 20.07.2018 passed in IA.No.14183 of 2016 in OS.No.3207 of 2016 on the file of the learned XVII Additional City Civil Court, Chennai and consequentially to reject the plaint in OS.No.3207 of 2016 and/or strike the pleadings from the record of the Court.

For Petitioner : Mr.P.Siddarth
for M/s.BFS Legal

For Respondent : Mr.S.Balasubramanian

CRP.No.1806 of 2019

Rajathi

... petitioner

Vs.



CRP.Nos.3008 of 2018, etc

1.K.R.Rama
2.R.Balamurugan

... Respondents

PRAYER:

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the judgment and decree dated 23.01.2019 passed in IA.No.231 of 2016 in OS.No.3693 of 2016 on the file of the learned XVII Additional City Civil Court, Chennai.

For Petitioner : Mr.P.Siddarth
for M/s.BFS Legal

For Respondents

For R1 : Mr.S.Sivashankar

For R2 : Mr.S.Balasubramanian

CRP.No.1265 of 2020

R.Balamurugan

... petitioner

Vs.

1.R.Rajathi
2.K.Sampath
3.Madhu Vikram

... Respondents

PRAYER:

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair order and decretal order dated 24.09.2019 and made in IA.No.11631 of 2016 in OS.No.3207 of 2016 on the file of XVII Additional City Civil Judge, Chennai and to allow the application.



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For Petitioner : Mr.S.Balasubramanian

For Respondents

For R1 : Mr.P.Siddarth,
for M/s.BFS Legal

CRP.No.1266 of 2020

R.Balamurugan

... petitioner

Vs.

Rajathi

... Respondent

PRAYER:

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair order and decretal order dated 24.09.2019 and made in IA.No.13106 of 2016 in OS.No.3207 of 2016 on the file of XVII Additional City Civil Judge, Chennai and to allow the application.

For Petitioner : Mr.S.Balasubramanian

For Respondent : Mr.P.Siddarth,
for M/s.BFS Legal

COMMON ORDER

The civil revision petition in CRP.No.1265 of 2020 has been filed to set aside the fair order and decretal order dated 24.09.2019 and made in IA.No.11631 of 2016 in OS.No.3207 of 2016 on the file of XVII Additional City



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Civil Judge, Chennai, thereby dismissed the application filed to implead the proposed defendants. The civil revision petition in CRP.No.1266 of 2020 has been filed to set aside the fair order and decretal order dated 24.09.2019 made in IA.No.13106 of 2016 in OS.No.3207 of 2016 on the file of XVII Additional City Civil Judge, Chennai, thereby dismissed the application seeking amendment of prayer in OS.No.3207 of 2016. The civil revision petition in CRP.No.3008 of 2018 has been filed to set aside the fair and decretal order dated 20.07.2018 passed in IA.No.14183 of 2016 in OS.No.3207 of 2016 on the file of the learned XVII Additional City Civil Court, Chennai, thereby dismissed the application seeking rejection of plaint. The civil revision petition in CRP.No.1806 of 2019 has been filed to set aside the judgment and decree dated 23.01.2019 passed in IA.No.231 of 2016 in OS.No.3693 of 2016 on the file of the learned XVII Additional City Civil Court, Chennai, thereby allowed the application to implead the proposed defendant.

2. The petitioner in CRP.Nos.1265 and 1266 of 2020 filed suit for bare injunction as against the petitioner in CRP.No.3008 of 2018 in respect of the suit schedule property and the case of the petitioner is that the suit property was purchased by him by the registered sale deed dated 30.03.2012 vide document No.1306 of 2012. While being so, the respondent entered into an agreement for sale with the petitioner by the registered agreement for sale dated 19.09.2014 vide



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document No.4057 of 2014. Even as per the sale agreement, no possession was handed over to the respondent herein. Though the petitioner approached the defendant on several occasions, she was not ready to pay the balance sale consideration and as such, the petitioner caused legal notice dated 21.01.2016, thereby cancelled the agreement for sale dated 19.09.2014. In the meanwhile, the respondent also lodged false complaint with the influence of police personnels and forcibly had taken the key of the suit property and handed over to the respondent. Even then, the petitioner filed suit for permanent injunction without asking the prayer of declaration declaring that the agreement for sale is null and void and recovery of possession.

2.1 While pending the said suit, the respondent filed suit for specific performance in OS.No.3693 of 2016 on the basis of the agreement for sale dated 19.09.2014. While pending both the suits, the petitioner filed application to implead the police personnels as parties to the suit and also filed application to include the prayer of declaration declaring that the agreement for sale is null and void and also for recovery of possession. The petitioner also filed application in the suit filed by the respondent in OS.No.3693 of 2016 to implead his wife as one of the defendants. The respondent also filed another application to reject the plaint in OS.No.3207 of 2016. Admittedly, the petitioner did not seek any prayer as against the police



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officials. Therefore, they are not necessary parties to the suit. Hence, the trial court rightly dismissed the application and this Court finds no infirmity or illegality in the order passed by the court below. Accordingly, the civil revision petition in CRP.No.1265 of 2020 is dismissed.

3. Admittedly, on the basis of the agreement for sale, the respondent filed suit for specific performance in OS.No.3693 of 2016 and it is pending. Therefore after filing the suit for specific performance, the petitioner has come forward with the application to include the prayer of declaration declaring that the agreement of sale is null and void. It is not permissible since already the respondent filed suit for specific performance on the basis of the very same agreement. Therefore, the court below rightly dismissed the application seeking amendment of plaint. Hence, this Court finds no infirmity or illegality in the order passed by the court below. Accordingly, the civil revision petition in CRP.No.1266 of 2020 is dismissed.

4. On perusal of the entire plaint in OS.No.3207 of 2016, it is coupled with bundle of facts and issues. Therefore, it cannot be rejected *in limine* and full fledged trial has to be conducted and all the issues have to be gone into by way of fullfledged trial. Hence, the court below rightly dismissed the application for



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rejection of plaint and this Court finds no infirmity or illegality in the order passed by the court below. Accordingly, the civil revision petition in CRP.No.3008 of 2018 is dismissed.

5. In the suit filed for specific performance on the strength of the agreement for sale executed by the second respondent, except the relationship of wife of the second respondent, she has nothing to do with the agreement for sale dated 19.09.2014. Without considering the same, the court below mechanically allowed the application filed by the first respondent and impleaded her as one of the defendants in the suit for specific performance. Therefore, this Court finds infirmity in the order passed by the court below and the same is liable to be set aside. Accordingly, the judgment and decree dated 23.01.2019 passed in IA.No.231 of 2016 in OS.No.3693 of 2016 on the file of the learned XVII Additional City Civil Court, Chennai is set aside and the civil revision petition in CRP.No.1806 of 2019 is allowed.

6. Admittedly, both the suits have been filed in respect of the same property between the same parties. Now, both are pending for trial in different courts. In the interest of justice and also in order to avoid conflict of interest, both the suits have to be tried together. Accordingly, the suit filed in OS.No.3693 of



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2016 on the file of the XVII Additional City Civil Court, Chennai is hereby

withdrawn and transferred to the file of the XXII Additional City Civil Court,

Chennai. The XXII Additional City Civil Court, Chennai is directed to conduct

joint trial in both the suits i.e. OS.Nos.3207 of 2016 and 3693 of 2016 and to

dispose of the same within a period of six months from the date of receipt of copy

of this order. It is also made clear that if the plaintiff in OS.No.3693 of 2016 fails to

succeed in her suit for specific performance, the plaintiff in the other suit i.e.

OS.No.3207 of 2016 is entitled to have the relief of possession. Consequently,

connected miscellaneous petitions are closed. There shall be no order as to costs.

27.01.2023

Speaking/non-speaking

Index : Yes/No

Internet : Yes

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CRP.Nos.3008 of 2018, etc

G.K.ILANTHIRAIYAN, J.

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To

- 1.The XVII Additional City Civil Court,
Chennai
- 2.The XXII Additional City Civil Court,
Chennai

CRP.Nos.3008 of 2018, 1806 of 2019,
1265 & 1266 of 2020

27.01.2023