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C.R.P.(PD).No.1477 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD).No.1477 of 2023

and

C.M.P.No.9780 of 2023

1.Anju Nahar

2.Akshay Nahar

3.Thansingh Nahar

... Petitioners

-Versus-

1.M.G.Nakeeran

2.The Sub Registrar,

Gudiyatham SRO,

Vellore – 632 602

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 23.12.2022 in I.A.No.4 of 2022 in O.S.No.156 of 2019 on the file of the I Additional District and Sessions Judge, Vellore.

For Petitioners : Mr.P.Tamilavel

For Respondent 1 : Ms.R.Aparna

*For Respondent 2 : Mr.C.Sathish,
Additional Government Pleader*



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ORDER

This civil revision petition seeks to set aside the order passed by the learned I Additional District and Session Judge, Vellore in I.A.No.4 of 2022 in O.S.No. 156 of 2019 dated 23.12.2022.

2. O.S.No.156 of 2019 is a suit for declaration of possessory title of the plaintiff and to declare that the purported sale deed said to have been executed by the plaintiff in favour of the defendants 1 and 2 dated 21.03.2012 is null and void and tainted by fraud, misrepresentation and coercion etc., and for the consequential relief of permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the property.

3. The case, according to the plaint, is that the property came to the hands of the plaintiff by virtue of a partition deed executed between the members of the family vide document No.4184 of 1982. Thereafter, the plaintiff would plead that he required urgent funds in order to meet his financial crisis and hence, approached the third defendant. The third defendant assured him that he will get funds from the defendants 1 and 2, if he executes a mortgage deed in their favour. The subject matter of the suit is the rear portion of the



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plaintiff's holdings.

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4. The plaintiff would state that on the assurance of the third defendant, he executed a mortgage deed in favour of the defendants 1 and 2. With an intention to redeem the mortgage, he issued a notice on 22.02.2019. To his shock and surprise, he received a reply notice from the defendants 1 and 2 on 20.03.2019 stating that what was executed on 21.03.2012 was not a mortgage deed but a sale deed. He would state that he had never intended to alienate the valuable property and he had only wanted to raise funds by mortgaging the same. He would plead that by playing fraud and misrepresentation on him, a document purporting to be a sale deed had been obtained by the defendants 1 and 2 at the instance of the third defendant. After the notice and reply notice had been issued between the parties, he would plead that defendants 1 to 3 were attempting to trespass into the suit property and hence, he sought for the additional relief of permanent injunction restraining the defendants from interfering with his peaceful possession of the suit schedule mentioned property.

5. On service of summons, the defendants have entered appearance.



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Thereafter, they filed their detailed written statement and the matter was posted for trial. In fact, PW1 has been examined and the matter is posted for cross examination of PW1. At that stage, the defendants 1 to 3 took out an application for rejection of plaint on the ground that the suit is barred as there is no cause of action and the suit has also been undervalued.

6. The learned Trial Judge came to a conclusion that none of the provisions of Order VII Rule 11 are attracted to the facts of the present case and dismissed the petition, against which the present revision.

7. I have heard Mr. P.Tamilavel for the petitioners and C.Sathish, learned Special Government Pleader for the second respondent.

8. A perusal of the plaint would make it clear that it is the clear and categorical case of the plaintiff that in all points of time what he wanted to execute was only a mortgage deed in favour of the defendants 1 and 2. He would plead that the third defendant induced him to execute the document on account of the fact that the property is situated in Vellore whereas the financiers, namely the defendants 1 and 2, are situated in Madras. He would



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plead that the third defendant had played an active role in the transaction and what he had obtained from the plaintiff was the sale deed. The plaintiff came to know about the sale deed only in March 2019, when the defendants 1 and 2 issued a reply notice to him. Immediately, he filed a suit in June 2019.

9. Mr.P.Tamilavel would vehemently contend that a perusal of the document would show that it is only a sale deed and it has also been registered and the plea that it is a mortgage deed is false one.

10. Whether the deed is a mortgage deed or sale deed can be gone into only at the time of trial. The plea of *non est* factum cannot be decided at the time of interlocutory application especially in an application for rejection of plaint.

11. I have to recollect the legal principle for rejection of plaint. While dealing with a case for rejection of plaint, I have to take the averments made in the plaint to be true and genuine and only thereafter, see if the plaint makes out the cause of action or not. The specific plea of the plaintiff is that he never intended to execute a sale deed, but it was only a purported sale deed. At all



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points of time, he only wanted to execute a mortgage deed for the immediate money that he required from the defendants 1 and 2.

12. As the averments in the plaint make out a cause of action and since the suit has been filed within a period of three years from the date of receipt of reply notice, I do not think that it is a fit case for rejection of plaint. May be the defendants have an excellent case at the time of trial to defeat the case of the plaintiff, but that cannot be a consideration while dealing with a plea of demurrer.

13. Accordingly, this civil revision petition is dismissed. The order passed by the learned I Additional District and Sessions Judge, Vellore in I.A.No.4 of 2022 in O.S.No.156 of 2019 dated 23.12.2022 is confirmed. No costs. Consequently, the connected miscellaneous petition is closed.

23.07.2024

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Index : yes / no

Neutral Citation : yes / no

Speaking / Non Speaking Order



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To

1.The I Additional District and Sessions Judge, Vellore



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V.LAKSHMINARAYANAN, J.

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