



CRP.No.2823 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2024

CORAM:

THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

CRP.No.2823 of 2022
and CMP.No.15245 of 2022

G.Anushka

... Petitioner/Petitioner / 2nd Defendant

Vs

1.N.S.Jagannathan
2.J.Vanitha
3.J.Premnath

... Respondents 1 - 3/Respondents/Plaintiffs

4.M/s.Jubilee Plot Housing Pvt Ltd.,
Represented by its Director
Mr.R.P.Dharmalingham
S/o.late.Ramakrishnan
Door No.15C, Plot No.1379C
6th Street, Vallalar Kudiyiruppu
I Block, Golden Villa, 18th Main Road
Anna Nagar West, Chennai - 600 040

... 4th Respondent / Respondent / 1st Defendant

5.The Sub Registrar
Avadi SRO, Avadi
Chennai - 600 054.

... 5th Respondent / Respondent / 3rd Defendant



CRP.No.2823 of 2022

WEB COPY

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decretal order dated 28.06.2022 made in I.A.No.531 of 2018 in O.S.No.186 of 2018 passed by the Additional District Munsif Court at Poonamallee.

For Petitioner : Mr.D.Saikumaran

For Respondents : Mr.E.Balakrishnan
for Mr.S.Namasivayam for RR1 to 3

Ms.R.Akila Rajendran
Government Advocate for R5

R4 - No appearance

ORDER

This civil revision petition arises against the order passed in I.A.No.531 of 2018 in O.S.No.186 of 2018 on the file of the Additional District Munsif Court, Poonamallee, dated 28.06.2022.

2. The suit in O.S.No.186 of 2018 is filed to declare that the agreement of sale, registered as document No.8246 of 2014 on the file of Sub Registrar



CRP.No.2823 of 2022

Office, Avadi, executed by the first defendant in favour of the second defendant on 03.07.2014, as null and void, and for consequential direction to the Sub Registrar, Avadi, to make entry of the said declaration in his records.

3. The case of the plaintiffs is that the first defendant had been given a Power of Attorney on 29.01.2013 for the purpose of converting the property into residential plots and to get necessary approval for the same. The first defendant had not taken any effort to get approval for the layout. Therefore, on 01.03.2013, the first defendant was called upon to state why the Power of Attorney must not be cancelled. Though the first defendant received notice, he did not respond to the same. Hence, by way of cancellation of Power of Attorney deed dated 14.03.2013, the Power of Attorney granted on 29.01.2013 was cancelled. After the cancellation of Power of Attorney, the plaintiffs came to know that the defendants 1 and 2 *inter alia* had entered into an agreement of sale on 03.07.2014. Since this is an encumbrance over the property, the plaintiffs instituted the suit.

4. On being served with the summons, the second defendant took out an application for rejection of plaint. The primary ground on which the suit



is sought to be rejected is that, it has not been valued properly, and that it is barred by time. The learned trial Judge took up the application in I.A.No.531 of 2018 and dismissed the same on 28.06.2022. Aggrieved by the same, the present civil revision petition has been presented.

5. Heard Mr.D.Saikumaran for the revision petitioner, Mr.E.Balakrishnan for Mr.S.Namasivayam for respondents 1 to 3, and Ms.Akila Rajendran, learned Government Advocate for the fifth respondent.

6. Mr.D.Saikumaran would contend that:

- (a) the suit is barred by time because the agreement had been entered in 2014 and the suit is presented only in the year 2018; and
- (b) the suit is not properly valued.

On these two grounds the plaint deserves to be rejected.

7. Mr.E.Balakrishnan would submit that these grounds cannot be gone into at the stage of rejection of plaint. Ms.R.Akila Rajendran, learned Government Advocate would state that whatever is the order of this Court, it



CRP.No.2823 of 2022

would be implemented by the Sub Registrar.

WEB COPY

8. I have carefully gone through the records, in particular, the impugned order. The suit has been valued under Section 25(d) of the Tamil Nadu Court Fees and Suit Valuation Act. The declaration sought for is to declare that the agreement entered into between the first and second defendant is null and void. To this agreement, none of the plaintiffs are parties. In fact, the agreement itself has been entered into only after the Power of Attorney, that had been granted in favour of the first defendant, had been cancelled by the plaintiff. Therefore, it cannot be said that the plaintiffs are parties to the documents through the Power of Attorney. The cause of action would arise only on the date of knowledge. A reading of the plaint pleadings indicate that immediately on getting to know about the agreement of sale, the plaintiffs have come forward with the suit. Unless and until the reading of the plaint itself discloses that the plaint is barred by time, Order VII Rule 11 is not entertainable on the ground that the suit is barred. That is not the situation in the present case. The first plea of Mr.D.Saikumaran has to be necessarily rejected and is accordingly rejected.



9. Insofar the second plea of Mr.D.Saikumaran is concerned, it is on the valuation of the suit. The suit is for cancellation of agreement. An agreement of sale does not transfer any interest in the immovable property. It continues to be in the realm of contract. Therefore, the question of valuing the property for the purpose of cancellation under Section 40 does not arise. The appropriate valuation has to be made under Section 25(d) of the Tamil Nadu Court Fees and Suit Valuation Act, and I find from the plaint that the suit has been valued only in terms of that charging section. In any event, the remedy for the defendant, in case that the suit is not properly valued, is to take a defence in the written statement and prove the same in terms of Section 12 of Tamil Nadu Court Fees and Suit Valuation Act. Rejection of plaint on under-valuation is unknown, unless and until the Court comes to a conclusion that the suit is undervalued, it can call upon the plaintiff to pay the deficit court fee, but that situation does not arise in the present case.

10. In the light of the above discussion, I do not find any reason to interfere with the order of the Additional District Munsif Court at Poonamallee passed in I.A.No.531 of 2018 in O.S.No.186 of 2018, dated fair 28.06.2022. Accordingly, the civil revision petition is dismissed. No costs.



CRP.No.2823 of 2022

Consequently, connected miscellaneous petition is closed.

WEB COPY

02.04.2024

Index:Yes/No

Internet:Yes/No

Speaking order/Non-speaking order
ds

To

1.The Additional District Munsif
Poonamallee.

2.The Section Officer
VR Section
High Court, Madras.



WEB COPY



CRP.No.2823 of 2022

V.LAKSHMINARAYANAN,J.

ds

CRP.No.2823 of 2022

02.04.2024