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Civil Revision Petition No.3511 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10/12/2024

C O R A M

THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

Civil Revision Petition ((PD) No.3511 of 2024
a n d
C.M.P.No.19041 of 2024

M.S.Palanivel ... Petitioner

Vs

1. R.K.Ramesh

2. The Sub-Registrar
Office of Sub-Registrar at Anniyur
Ananthapuram Main Road
Villupuram District 605 202. ...

Respondents

PRAYER Petition filed under Article 227 of the Constitution of India against the fair and decreetal order passed by the learned Additional District Munsif, Villupuram, dated 28/6/2024 in dismissing I.A.No.419 of 2023 in O.S.No.82 of 2023.

For petitioner ... Mr.S.Ramesh

For respondents ... No appearance for R.1.

Mr.M.Muthuvel
Government Advocate
for R.2.



ORDER

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This Civil Revision Petition arises against the order passed by the learned Additional District Munsif, Villupuram, in I.A.No.419 of 2023 in O.S.No.82 of 2023 dated 28/6/2024.

2. For the sake of convenience, the parties shall be referred to as per their ranks in the suit.

3. O.S.No.82 of 2023 was presented for the following reliefs:-

(i). Permanent injunction restraining the first defendant, his men, agent/s or person/s claiming through him in any manner selling or conveying or further encumbering the suit schedule mentioned property to any third party/parties except to the plaintiff;

(ii). Directing the defendants to pay the costs

4. The cause of action for the suit was that the plaintiff and first defendant had entered into a Memorandum of Understanding (MOU) on 30/6/2022. Under the said MOU, the plaintiff had paid the defendants a sum



of Rs.1,05,00,000/- as sale advance. During the relevant time, the property, which is the subject matter of the suit, was covered by a mortgage (MODT) in Document No.1547/2017 dated 22/9/2017 in favour of IDBI Bank. Since the property was covered by mortgage, the parties did not enter into an agreement of sale. After the payment of the advance of Rs.1,05,00,000/-, the plaintiff alleges that first defendant had handed over the documents relating to the property on 27/7/2022. Subsequently, on 18/10/2022, the plaintiff and the first defendant entered into a sale agreement, more or less, on the same terms and conditions as found in the MOU dated 30/6/2022.

5. As per the MOU, the first defendant had to execute a sale deed in favour of the plaintiff, immediately, on the discharge of MODT. The MOU also reads that all registration formalities would have to be completed within 14 months from 30/6/2022.

6. As the first defendant did not come forward with the execution of the sale deed, the plaintiff issued a notice on 5/9/2023 calling upon the first defendant to execute the sale deed. Notice was received by the first defendant, yet he did not respond to the same. Notice was also marked to the second defendant. The second defendant, issued a reply. In the



meantime, plaintiff came to know that first defendant is going to alienate the property and therefore, presented the suit for the aforesaid reliefs.

7. In order to obviate any plea of bar under Order II Rule 2 of the Code, in case the cause of action for specific performance had arisen, he filed a petition under Order II Rule 2 sub Clause (3). This application was numbered as I.A.No.419 of 2023. Notice was ordered to the first defendant. The first defendant filed a counter admitting to the MODT. However, he denied the MOU dated 30/6/2022 and the unregistered sale agreement deed dated 18/10/2022. He pleaded that the plaintiff has no intention to file a suit for specific performance. In order to create a hurdle, he has presented the present application in the suit.

8. On the basis of the affidavit and counter, the learned trial Judge took up the application for disposal.

9. The learned trial Judge, viewed that Section 41 (h) of the Specific Relief Act is a bar to a suit for injunction. He viewed that the issue has been concluded by the judgment of this Court in ***M/s.RAJKUMAR CONSTRUCTION LIMITED, rep. BY ITS MANAGING DIRECTOR***



Mr.C.S.S.RAJAH Vs. K. DURAISAMY (2018-1-Law Weekly – 655) and

consequently, dismissed the said petition. Aggrieved by the same, present Civil Revision Petition.

10. When the matter came up for admission, I ordered notice to the learned counsels who represented the defendants in the Court below. Mr.Ramesh pleads that he has taken notice on the counsels and has also filed an affidavit of service. There is no representation on behalf of the first defendant. The second defendant is represented by Mr.Muthuvel.

11. I heard Mr.Ramesh and Mr.Muthuvel.

12. Mr.Ramesh pleads that on the date of presentation of the plaint, there was no response from the first defendant denying the agreement. It was only the second defendant, who had sent a reply, that the plaintiff would have to produce records before him, in order to satisfy any objections relating to presentation of sale deed by the first defendant. According to Mr.Ramesh, the cause of action would arise in terms of Clause 10 of the agreement, only when the MODT is discharged. As the date of discharge of MODT is not certain, the time fixed under Clause 10 would have to be read



subject to the first clause and therefore, cause of action for filing a suit for specific performance had not arisen. He places reliance upon a Division Bench judgment of this Court in ***DYNAMIC ASSOCIATES, rep. BY ITS PARTNER Mr.SUNIL P.PIRALIYA Vs. SINGARACHARLU AND OTHERS 2023 SCC OnLine Mad 4642*** and two judgments of the Supreme Court in ***VIRGO INDUSTRIES (ENG.) PRIVATE LIMITED Vs. VENTURETECH SOLUTIONS PRIVATE LIMITED (2013) 1 SCC 625*** and ***SUCHA SINGH SODHI (DEAD) THROUGH LEGAL REPRESENTATIVES Vs. BALDER RAJ WALIA & ORS AIR 2018 SC 2241*** that he is entitled to leave and that the order of the learned trial Judge is erroneous.

13. Mr.M.Muthuvel submits that as a State defendant, the second defendant will abide by any orders passed by this Court. He points out this is primarily a dispute between the plaintiff, and first defendant, the second defendant has been impleaded as a party only for ensuring that no sale deed is registered by the first defendant at the hands of the second defendant.

14. I have carefully considered the submissions of both sides.



15. The present suit is one for permanent injunction. For the purpose of applying Order II Rule 2 of the Code of Civil Procedure, the cause of action to file a suit for specific performance and the cause of action for the permanent injunction should have arisen at the same time. In case, the cause of action had arisen for both the reliefs and he does not sue on the first relief but sues only on the second relief, then in terms of Order II Rule 1 of the CPC, the plaintiff is deemed to have relinquished the relief with respect to specific performance. The plaintiff is saved from plea of such relinquishment, in case, he obtains leave under Order II Rule 2 (3) of the Code.

16. A careful reading of Order II Rule 2 (1) and Order II Rule 2 (3) would make it clear that the cause of action for both the suits should have arisen on the date, on which the first suit is presented. If the cause of action for a suit for specific performance has not arisen, the issue of filing a suit for specific performance would not arise. This is because for maintaining a suit, there should be a cause of action.



17. A reading of Clause 10 of the agreement of sale shows that the first defendant had to execute a sale deed in favour of the plaintiff immediately, on the discharge of MODT in favour of IDBI Bank. In other words, as long as the suit property is covered by the mortgage, cause of action for the plaintiff to seek for specific performance has not arisen. Even after discharge, the plaintiff should have called upon the first defendant to execute the sale deed. If the first defendant refuses, to execute the sale deed, then cause of action for specific performance suit would arise. This is because reading of Clause 10 shows that the date on which MODT is to be discharged is not certain. Though the later Clause speaks about 14 months from the date of entering into of the MOU, that does not mean that without discharging the mortgage, the plaintiff could have called upon the first defendant to execute the sale deed. In fact, the second defendant would not have registered a sale deed when MODT is alive. Whether the practice followed by the Sub-Registrars in refusing to register sale deeds, when it is covered by a mortgage is correct or not, is a different matter. I need not dwell on it in this case. Suffice to state that the mortgagor does not lose his right to alienate the property, merely because, there is a subsisting mortgage.

18. Be that as it may, the parties have agreed that only upon the



discharge of the mortgage, the plaintiff gets the cause of action to call upon the first defendant to execute the sale deed. A careful reading of the plaint shows that nowhere in the plaint, the plaintiff had pleaded that first defendant has discharged the mortgage and still first defendant had not executed the sale deed in terms of Clause 10.

19. The cause of action for the present suit arose on account of the apprehension in the mind of the plaintiff that the first defendant would alienate the property defeating his interest. The plaint does not read that the mortgage has been discharged, the property has been cleared of the encumbrance and despite the same, first defendant had refused to comply with the terms of the agreement. The refusal by the first defendant is only by way of counter that has been filed in I.A.No.419 of 2023. Even in the said counter, the first defendant has not pleaded that he has discharged the mortgage. Therefore, applying Order II Rule 2 (3) of the Code of Civil Procedure, I am of the view that application in I.A.No.419 of 2023 itself was unnecessary. The judgment of this Court in ***M/s.RAJKUMAR CONSTRUCTION LIMITED Vs. K. DORAI SAMY 2018 1 Law Weekly – 665*** turned on the fact that, in that particular case, the cause of action for filing a suit for specific performance suit had already arisen.



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20. Further, the learned Judge had referred to two judgments of this Court in ***T.S.M.CHELLIAH AND ANOTHER Vs. REV.Dr.GNANAVASAKAM AND ANOTHER, 1997 (1) CTC 724*** and ***K.S.BALASUBRAMANIAM Vs. S.MUNUSWAMY 2000 (2) CTC 417***. In both those cases, this Court had taken a view that injunction cannot be granted against the true owner, merely, on the basis of the agreement of sale that has been entered into between the parties. Both these judgments have not dealt with the scope of Order II Rule 2 of the Code. Therefore, their application in the facts and circumstances of the present case is mis-placed.

21. In the light of the above discussion, I have to hold that cause of action to file a suit for specific performance would arise only when the first defendant had denied the agreement. The denial arose only on filing of the counter in I.A.No.419 of 2023, as the first defendant had remained silent, to the suit notice that had been issued by the plaintiff. Therefore, the necessity to file a petition invoking Order II Rule 2 of the Code did not arise. Hence, the dismissal of the petition under Order II Rule 2 by the learned Additional District Munsif, Villupuram is sustained, not for the reasons given by the learned trial Judge but on the ground, the petition itself is not maintainable.



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The cause of action for filing the suit of specific performance had arisen, as pointed out above, only when the counter was filed in the application. It is upto the plaintiff to work out his rights in accordance with law.

22. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

23/10/2024

mvs.

Index : Yes / No

Neutral Citation: Yes/No

To

1. The Additional District Munsif, Villupuram.
2. The Sub-Registrar
Office of Sub-Registrar at Anniyur
Ananthapuram Main Road
Villupuram District 605 202.

V.LAKSHMINARAYANAN,J

mvs.



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