



C.R.P.No.5076 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2024

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THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.5076 of 2024

1.T.R.Mallika
2.T.R.Udayakumar ... Petitioners

Vs.

1.Dattatreya babu kunnappareddy
2.S.Roshan ... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the impugned fair and final order dated 30.07.2024 passed in I.A.No.04 of 2022 in O.S.No.12 of 2022 on the file of the District Munsif Court, Ponneri.

For Petitioners : Mrs.T.R.Ramya

ORDER

This civil revision petition challenges the order of the learned District Munsif Court, Ponneri, passed in I.A.No.04 of 2022 in O.S.No.12 of 2022, dated 30.07.2024.



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2.The civil revision petitioners are the defendants 1 & 2 in the suit.

O.S.No.12 of 2022 is a suit for permanent injunction restraining the defendants 1 & 2 from alienating and encumbering the suit properties to third defendant or to any other third parties.

3.The claim of the plaintiff is that the suit items 1 and 2 had been purchased by the first and second defendants respectively and they had agreed to sell the property to the defendants on 03.09.2016. The sale consideration was fixed at Rs.40 lakhs and substantial sum of Rs.39 lakhs had been paid on the date of the sale agreement itself. On the date of the agreement, the plaintiff had been put in position of the property. Subsequently, on 25.02.2021, the defendants 1 & 2 came along with some real estate brokers and made an attempt to alienate and encumber the property in favour of the third defendant. Finally, on 23.02.2021, they attempted to proceed further with their illegal object of alienating the property when the plaintiff has an agreement. Hence, he presented the suit for the aforesaid reliefs.



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4.Pleadings have been completed, a detailed written statement has been filed by the defendants to the suit. Thereafter, the defendants 1 & 2 took out an application for rejection of plaint in I.A.No.4 of 2022. After receipt of a counter from the plaintiff, the learned Judge proceeded to dismiss the application. Hence this revision

5.I heard Mrs.T.R.Ramya for the civil revision petitioners. She urged that the order passed by the Trial Court is erroneous on the following grounds;

(i) a suit for permanent injunction is not maintainable and the appropriate remedy is to file a suit for specific performance.

(ii) There is a large discrepancy in the pleadings regarding the sale consideration mentioned in the agreement and the sale consideration mentioned in the plaint.

(iii) The signatures found in the agreement are rank forgery and they do not belong to the defendants 1 & 2.

(iv) The injunction suit is barred by limitation.

(v) The suit lacks cause of action, because there is no explanation for



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the alleged delay, from the date of agreement till the presentation of the plaint.

(vi) since the defendants are in possession of the property and the plaintiff has not produce any documents to substantiate that he is in possession of the property, the suit has to fail.

(vii)The plaintiff has not proved readiness and willingness in order to enable him to obtain a decree in the suit and there is no pleading to that effect in the plaint either.

(viii)Finally, the suit for injunction has been filed only in order to avoid the payment of Court fee for a suit for specific performance.

6.I have carefully considered the submissions of Mrs.T.R.Ramya.

7.With respect to the first plea that the plaintiff ought to have filed a suit for specific performance alone and not presented a suit for permanent injunction, I have to point out that the plaintiff had moved an application under Order 2 Rule 2 (3) of the Code. In the said application, he sought for



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permission of the Court to file a suit for specific performance in future. This application was numbered as I.A.No.2 of 2022 and the Court also permitted him to file a separate suit for specific performance in future, in and by an order dated 31.03.2022. Therefore, the first submission of Mrs.T.R.Ramya has to fail. I have to point out here that though the defendants had entered appearance and filed a written statement, they have not taken any steps to challenge the order granting the leave under Order 2 Rule 2 of the Code of Civil Procedure before the superior forums of law. Hence, this plea cannot be entertained at the time of rejection of plaint.

8.With reference to the arguments that,

- (i) there is a discrepancy in the amount,
- (ii) the signature in the agreement is a forgery,
- (iii) no explanation in presenting the suit for injunction with delay,
- (iv) no document had been let in by the plaintiff to prove his possession, are all matters, which have to be gone into only at the time of trial.

9.When a Court is considering an application for rejection of plaint, it



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has to deal only with the averments made in the paint and the documents filed therein. The points that have been submitted by Mrs.Ramya are all relevant at the time the suit is taken up for final hearing. It is always open to the defendants to prove that they are in possession of the property and that the plaintiff is not entitled to the relief of permanent injunction by virtue of the bar under section 41(h) of the Specific Relief Act.

10.Refusal for a decree is different from rejecting the plaint. If the plaint is rejected, the plaintiff always has the remedy under Order VII Rule 13 of the Code of Civil Procedure to file a fresh suit on the same cause of action. If the suit is dismissed, after relying upon section 41(h), then a suit on the same cause of action cannot be presented again.

11.The argument of Mrs.Ramya that there is no pleading on readiness and willingness or any proof thereof are not considerations in a suit for permanent injunction. The plea of readiness and willingness is essential in a suit for specific performance. This by virtue of Form 47 attached to the



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Code. In a suit for injunction, there is no requirement to make such a plea.

When there is no requirement to make such a plea, the failure to make such a plea will not be a fatal to the suit.

12.Finally, on the aspect of the Court fee, I have to point out that when it comes to the matters of Court fee and jurisdiction, it is the averments made in the plaint, which alone matters. The plaintiff has chosen to value his relief under section 27(c) and has paid the fee of Rs.30/-. This cannot be found to be a case of undervaluation. In any event, under Order 7 Rule 11(b) of the Code of Civil Procedure, to reject the plaint for undervaluation, there has to be a prior order passed by the Court that the suit has been undervalued and despite the time granted by the Court, the plaintiff should not have made good the deficit. There being no such prior order in this case, the issue of Court fee also does not arise.

13.In the light of above discussions, I do not find any reason to take a



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different view than the one taken by the learned District Munsif Court, Ponneri.

14. Accordingly, the order passed in I.A.No.04 of 2022 in O.S.No.12 of 2022, dated 30.07.2024 stands confirmed and the civil revision petition is dismissed. No costs.

15. The learned District Munsif shall take note of the fact that the pleadings are complete and the suit is ripe for trial. The Court shall proceed further with the trial of the suit on a weekly basis ensuring that the suit gets hearing atleast twice in a week. The suit itself must be disposed within a period of **six months** from the date of receipt of a copy of this order.

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Internet: Yes
Index: Yes/No
Speaking/Non speaking order
NCC: Yes/No
To:

20.12.2024

The District Munsif Court,

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V.LAKSHMINARAYANAN,J.



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