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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.12.2024

CORAM

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

C.R.P.(MD)(PD)No.764 of 2021

Sujatha

... Petitioner

-VS.-

Philominal

...Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India to call for the records pertaining to the order and decreetal dated 06.03.2021 passed by the learned Subordinate Judge of Lalgudi in I.A.No.1 of 2020 in O.S.No.8 of 2019 and to set aside the same.

For Petitioner :Mr.S.Sheik Ammal
For Respondent :Ms.J.Maria Roseline



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ORDER

The Civil Revision Petition has been filed challenging the order passed by the learned Subordinate Judge, Lalgudi in I.A.No.1 of 2020 in O.S.No.8 of 2019, dated 06.03.2021.

2.The respondent, as plaintiff, had filed a suit in O.S.No.8 of 2018 on the file of the Subordinate Court, Lalgudi, to declare the sale deed, dated 06.08.2010, as null and void and for other injunction. During the pendency of the suit, the petitioner/defendant filed an application under Order VII Rule 11 CPC to reject the plaint filed by the respondent/plaintiff by contending that though the plaintiff filed a suit to declare the sale deed as null and void, in some portion of the plaint, it was stated that it is a rental agreement. The trial Court has dismissed the said application by order, dated 06.03.2021. Challenging the same, the present Civil Revision Petition has been filed.

3.Heard the leaned Counsel appearing for the petitioner and the learned Counsel appearing for the respondent.



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4.The learned Counsel for the Revision Petitioner contended that there is no cause of action in the suit as the plaintiff has pleaded for declaring the sale deed as null and void and in some other portions of the plaint, he pleaded that it is a rental agreement.

5.The learned Counsel for the respondent contended that it is not a sale deed and it is a mortgage deed.

6.Whether it is a sale deed or mortgage deed as contended by the learned Counsel for the respondent/plaintiff or which is disputed by the Revision Petitioner claiming that it is a lease deed, it is a matter of fact, that can be gone into only at the time trial. These are all question of fact, which has to be adduced by way of marking documents and by adducing evidence and more predominantly, such allegations should form part in the plaint as well as in the written statement and the pleadings and documents has to be filed and has to be proved before the trial Court.

7.The trial Court in the impugned order had extracted the relevant



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portion of the order passed by the Hon'ble Supreme Court in **(2004) 9 SCC 512**, between **Liverpool & London S.P. & I Association vs M.V.Sea Success I & Another**, which reads as follows:

“139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.”

8. In view of the above, this Court is of the view that there is no infirmity or illegality in the order passed by the trial Court and the Civil Revision Petition is dismissed.

9. As the suit is pending from 2008 before the Subordinate Court, Lalgudi, the trial Court is directed to conclude the trial within a period of one year from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition

04.12.2024

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To

The Subordinate Judge, Lalgudi.



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N.SENTHILKUMAR, J.

cmr

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