



C.R.P(MD)No.1778 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P(MD)No.1778 of 2022

and

C.M.P.(MD)No.7927 of 2022

1.R.Dhandapani
2.M.Sabapathy
3.D.Dhanalakshmi
4.V.Sangeetha

... Revision Petitioners/Defendants

vs.

A.Sivaraj

... Respondent/Plaintiff

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to strike off the plaint in O.S.No.151 of 2022 on the file of the Additional District Court (Fast Track Court), Palani.

For Petitioners : Mr.S.Krishnan

For Respondents : Mr.M.Ajmalkhan
Senior Counsel
for Mr.S.R.Sureshkumar

ORDER

The Civil Revision Petition is filed to strike off the plaint in O.S.No.151 of 2022 on the file of the Additional District Court (Fast Track



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Court), Palani.

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2.It can be seen as per the plaint that the plaintiff has pleaded that the plaintiff obtained loan from the defendants. The suit schedule property was supposed to be mortgaged. But however, on the instance of the defendants, a sale deed was executed and also a sale agreement to resell the property to the plaintiff, in the event of the plaintiff paying the sum borrowed along with interest, was also executed between the parties. In the teeth of the said pleadings, prayers are made to declare that the plaintiff is the owner of the property, to cancel the said sale deed and to enforce the agreement which is entered into, etc.

3.The learned counsel made arguments relating to limitation with reference to the prayer to cancel the sale deed. Made arguments with reference to the Court fee which is paid with reference to the relief of specifically enforcing the agreement. Made arguments with reference to Section 58 of the Transfer of Property Act, 1882 as to in the absence of any recitals in the sale deed, whether the sale can be considered to be a mortgage by conditional sale.



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4.I am of the view that with reference to each and everyone of the said arguments, the petitioner has remedies by filing the application under the Tamil Nadu Court Fees and Suits Valuation Act, 1965 by filing applications under Order VII Rule 11 of CPC or to take up the issue of limitation as a preliminary issue in the suit, as the case may be, accordingly, if the petitioner so advised. This is not a case, where this Court should exercise its sparing jurisdiction under Article 227 of the Constitution of India. Therefore, leaving open the rights of the petitioner to be raised either in the written statement or by filing such interlocutory applications as the defendants may choose in accordance with law.

5.The Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

01.08.2024

NCC : No
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To

The Additional District Court (Fast Track Court), Palani.



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D.BHARATHA CHAKRAVARTHY, J.

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