



C.R.P.(MD)No.1961 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P.(MD)No.1961 of 2023

and

CMP(MD)No.9843 of 2023

P.Chinnakani ... Petitioner/Petitioner/1st Defendant

vs.

1.A.Rajamony ... 1st Respondent/1st Respondent/Plaintiff

2.A.Rajaram ... 2nd Respondent/2nd Respondent/2nd Defendant

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India., to set aside the fair and decretal order datd 10.07.2023 passed in I.A.No.2 of 2022 in O.S.No.140 of 2022 on the file of the I Additional Sub Judge, Nagercoil.

For Petitioner : Mr.S.Vashik Ali

For Respondents : No Appearance



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C.R.P.(MD)No.1961 of 2023

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 10.07.2023 made in I.A.No.2 of 2022 in O.S.No. 140 of 2022 on the file of the I Additional Sub Judge, Nagercoil.

2.The said interlocutory application, which was filed by the petitioner under Order VII, Rule 11 of CPC to reject the plaint, was dismissed by the trial Court and hence, the Civil Revision Petition.

3.On perusal of the material records of the case, it can be seen that as per the plaint, the plaintiff is pleading that he sold the property to the defendants by accepting only a sum of Rs.2,50,000/- as consideration on the ground that the first defendant promised that he will refund the advance amount of Rs.12,00,000/- to the second defendant, who is a tenant in the property. The first defendant has not refunded the advance amount. He has filed a suit for eviction of the tenant. The plaintiff appeared in the said case in the year 2019 and



C.R.P.(MD)No.1961 of 2023

only thereupon, he came to know of the said fact. Therefore, the present suit is filed for a decree for cancellation of the sale deed dated 18.11.2015 as Document No.3511 of 2015 before the Kanyakumari Joint Sub Registrar between the plaintiff and the defendants and also for declaration of title and recovery of possession.

4.Even considering one as a naive person to believe whatever the plaintiff says and even taking the plaint averments true, even for arguments sake, if it is to be believed that the first defendant agreed while the execution of the sale deed to repay the advance amount, even then the reliefs which are prayed for in the plaint cannot be granted. As such, the trial Court ought to have allowed the application.

5.This apart, it can be seen from the averments made in the plaint that for a property which is said to have been let out for a monthly rent of Rs.7,500/- to the second defendant, it is stated that an advance amount of Rs.12,00,000/- is received. It can be seen that even



C.R.P.(MD)No.1961 of 2023

as per the plaint, the sale deed was executed on 18.11.2015 as Document No.3511 of 2015. Thus, *ex facie* the averments made in the plaint tantamount to abuse of process of Court also. Therefore, since the plaint does not disclose any cause of action and is an abuse of process of Court. The trial Court ought to have allowed the petition for rejection of plaint and erred in dismissing the same.

6. Therefore, I am inclined to interfere in the matter and the Civil Revision Petition is allowed on the following terms:

(i) The order dated 10.07.2023 passed in I.A.No.2 of 2022 in O.S.No.140 of 2022 is set aside and consequently, I.A.No.2 of 2022 in O.S.No.140 of 2022 on the file of the I Additional Sub Judge, Nagercoil stands allowed.

No costs. Consequently, connected miscellaneous petition is closed.

29.07.2024

NCC : Yes / No
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C.R.P.(MD)No.1961 of 2023

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The I Additional Sub Judge, Nagercoil.



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C.R.P.(MD)No.1961 of 2023

D.BHARATHA CHAKRAVARTHY, J.

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C.R.P.(MD)No.1961 of 2023

29.07.2024