

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE, DHARMAPURI.

Present: Tmt.U.Monica,M.L.,
Additional Sessions Judge,
Dharmapuri.

Thursday, this the 17th day of November 2022.

I.A.No.8/2021
in
O.S.No.12/2021
(CNR No.TNDP010001392021)

P.K.Pounraj

... Petitioner/Plaintiff

/versus/

D.Rajasekar

... Respondent/Defendant

This petition is coming on this day for final hearing for consideration before me on 15.11.2022 in the presence of Thiru V.V.Venkatesan, Advocate for the Petitioner and Thiru K.M.R.Venkatachalapathi, Advocate for the respondent and upon hearing the arguments of both side and on perusal of the case records and having stood over till this day, this court pronounced the following:

ORDER

This petition has been filed under Order 6 Rule 17 and Sec.151 of CPC to amend the plaint.

2. The averments in the petition in brief is as follows:

The petitioner has filed the suit for declaration and permanent injunction. he has filed two petitions one for restraining the defendants and alienating the suit property and injunction restraining respondent from interfering with petitioners peaceful possession and enjoyment of the suit property. After hearing both side,

petitions were posted for 06.12.2021. On the side of petitioner, Ex.P1 to P7 were marked. 8th document bank challan could not be marked and the same was photo copy. The petitioner did not execute any sale deed on 23.03.2020. The petitioner did not borrow any amount from the respondent. In order to prove the case, the petitioner wants to mark his bank statement. Respondent did not hand over the cheques mentioned in the sale deed. The said cheques were not encashed by the petitioner. Actually the respondent who is the owner of Vennila Traders had transferred money through RTGS from TMB account to PKP Feed Mill account maintained in South Indian Bank on 08.04.2020. The respondent has suppressed the above facts. The petitioner came to know about this only on 02.12.2021 and obtained the statement of account of PKP Feed Mill. The suit properties are worth of many crores. The square feet value of survey No.148/7B2 mentioned in the sale deed No.1247/2020 is Rs.94/- per square feet. But actually the property is situated near Krishnagiri National Highway and the market value of the property is more than Rs.1,000/- per square feet. There are buildings, hundreds of coconut trees and Teak trees in it. The property worth of more crores. There is no necessity to the petitioner to sell for Rs.2,00,000/-. As registration of document have been kept in abeyance stating that the value of the property is very low, it has to be construed that sale deed was executed as security for loan transaction. The sale consideration is only the loan amount borrowed by the petitioner and not actual market price. The sale deeds are liable to be cancelled. Hence the above facts are necessary to be stated in the plaint. Hence the plaint has to be amend accordingly.

3. The averments in the counter of respondent in brief is as follows:

The respondent is the owner of Vennila Traders and from his Tamil Nadu Mercantile Bank account, he transferred through RTGS on 08.04.2020 to PKP Feed Mill account maintaining South Indian Bank is true. The petitioner has received sale consideration mentioned in sale deed and having sold properties have filed this suit against terms of registered sale deed, so suit is not maintainable. There is no prima facie case made out to amend the plaint. If the amendment is allowed the nature of suit will change. Hence, the petition is liable to be dismissed.

4. The point for consideration:

Whether the petition is to be allowed or not?

5. No oral or documentary evidence have been adduced on either side. Heard. Records perused.

6. Point:

a) The petitioner alleges that he did not execute any sale deed on 23.03.2020. The petitioner did not borrow any amount from the respondent. In order to prove the case, the petitioner wants to mark his bank statement. Respondent did not hand over the cheques mentioned in the sale deed. The said cheques were not encashed by the petitioner. Actually the respondent who is the owner of Vennila Traders had transferred money through RTGS from TMB account to PKP Feed Mill account maintained in South Indian Bank on 08.04.2020. The respondent has suppressed the above facts. The petitioner came to know about this only on 02.12.2021 and obtained the statement of account of PKP Feed Mill. The suit properties are worth of many crores. The square feet value of survey No.148/7B2 mentioned in the sale

deed No.1247/2020 is Rs.94/- per square feet. But actually the property is situated near Krishnagiri National Highway and the market value of the property is more than Rs.1,000/- per square feet. There are buildings, hundreds of coconut trees and Teak trees in it. The property worth of more crores. There is no necessity to the petitioner to execute sale deed for Rs.2,00,000/-. As registration of document have been kept in abeyance stating that the value of the property is very low, it has to be construed that sale deed was executed as security for loan transaction. The sale consideration is only the loan amount borrowed by the petitioner and not actual market price. The sale deeds are liable to be cancelled. Hence the above facts are necessary to be stated in the plaint. Hence the plaint has to be amend accordingly.

b) The respondent contested the petition by alleging that he is the owner of Vennila Traders and from his Tamil Nadu Mercantile Bank account, he transferred through RTGS on 08.04.2020 to PKP Feed Mill account maintaining South Indian Bank is true. The petitioner has received sale consideration mentioned in sale deed and having sold properties have filed this suit against terms of registered sale deed, so suit is not maintainable. There is no prima facie case made out to amend plaint. If the amendment is allowed the nature of suit will change.

c) The petitioner has filed the suit for declaration and permanent injunction. Now the petitioner wants to amend plaint regarding payments made and as to market value of suit properties. This court is of view that amendment sought for will not in any way change cause of action for the suit. It only seeks to clarify and explain case of plaintiff. Further proposed amendment will not give any advantage to plaintiff, as he has to prove it. No prejudice would be caused to respondent if the amendment is

allowed, as he will have ample opportunity to put forth his defence by filing additional written statement.

d) The trial has not yet commenced in thi suit. In interest of justice, to provide petitioner an opportunity to prove the case, prevent multiplicity of proceedings and for proper adjudication of case, this court is of view that petition has to be allowed on costs.

In the result, petition is allowed on payment of cost of Rs.2000/- to respondent, cost to be paid on or before 23.11.2022 failing which petition stands dismissed. Call on 24.11.2022.

Dictated by me, typed by the Steno-typist, corrected and pronounced by me in Open Court on this the 17th day of November 2022.

Additional Sessions Judge,
Dharmapuri.

Both Side Evidence, Exhibits: Nil.

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Additional Sessions Judge,
Dharmapuri.

Fair/Draft Order

I.A.No.8/2021 in

O.S.No.12/2021

Dated:17.11.2022.