

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE, THENI.

Present: Thiru. C.Sanjai Baba, B.A.,LLB.,

Principal District Judge, Theni

Thursday the 06th day of July 2023.

I.A.No.01/2021

-In-

O.S.No.19/2021

1. Govindarajan
2. Shenbhagavalli

... Petitioners / Defendants

-Versus-

Rajeshkanna

... Respondent / Plaintiff

This petition was taken on file on 24.03.2021 and came up before me on 04.07.2023 for final hearing in the presence of Thiru.Guru Radhakrishnan, Advocate for the Petitioners and of Thiru.V.Murugan, Advocate for the Respondent and upon perusing the records and on hearing petitioner side arguments, this Court delivered the following;

ORDER

This petition has been filed by the petitioners under O.7, R.11 and Section.151 of CPC to reject the Plaint.

BRIEF AVERMENTS CONTAINED IN THE AFFIDAVIT FILED ALONG WITH THE PETITION:-

2. The Defendants are the Petitioners. This suit is filed for Specific performance of the sale agreement entered into by the respondent/plaintiff and the petitioners/defendants on 31.07.2019. The petitioners/defendants have come up with this application to reject the plaint by invoking Section O.7 Rule 11 and Section 151 of CPC. The reason stated in their affidavit is that the suit properties were purchased by two registered sale deeds dated 02.11.1983 and 24.04.1985 by Soundhirapandiyan and Seethalakshmi and they have been in joint possession of the properties and that they are entitled to 2/4 undivided shares in the suit scheduled properties. They entered into a sale agreement with the petitioners/defendants to sell the suit properties on 31.07.2019 and have also received a sum of Rs.15 Lakhs as advance sale consideration. In the sale agreement they had agreed that the suit properties will be sold to the respondent/plaintiff after getting final decree in the partition suit filed by them and after getting their shares. In the meanwhile contrary to the terms of the agreement the respondent/plaintiff is insisting them to sell the properties when the suit is pending which is contrary to the terms of the agreement and further the respondent/plaintiff is making false allegations as if the petitioners/defendants were attempting to alienate of the properties to third parties and has also issued the paper publication to that effect.

3. The Specific contention is raised by the petitioners/defendants is that the suit is immature because the suit should not have been filed by the respondent/plaintiff before the petitioners/defendants get share by final decree and therefore the suit is vexatious, frivolous and merit-less in the absence of clear right to sue hence the plaint does not disclose any cause of action. Therefore should be rejected.

THE AVERMENTS CONTAINED IN THE COUNTER STATEMENT:-

4. The Respondent/Plaintiff have filed their counter stating that the petitioners/defendants entered into the sale agreement by agreeing to sell their 2/4 share and received a sum of Rs.15 lakhs as advance sale consideration on 31.07.2019 and subsequently they had received Rs.3 Lakhs on 23.05.2020 and another 2 lakhs on 14.08.2020 and in total they have received the amount of Rs.20,00,000/- and though the Respondent/Plaintiff is always ready and willing to get the sale registered by paying the balance sale consideration, the petitioners/defendants are not coming forward to get the partition suit disposed at the earliest and not to coming forward to execute the sale in favour of the Respondent/Plaintiff. In the meanwhile the petitioners/defendants were attempting the alienate of the property to 3rd parties and leave India and despite issuance of the paper publication on 16.01.2021, the defendant had alienated the property to one Imranhan on 21.01.2021 by way of Registered sale

deed and suppressing all these facts, have come forward this application to reject the plaint and therefore the same has to be dismissed.

5. POINT FOR CONSIDERATION:-

Whether the rejection of plaint sought for in the petition has to be allowed or not at this stage?

POINT:-

6. Heard both sides. The specific contention raised by the Petitioners/Defendants is that the Respondent/plaintiff was insisting them to sell the property when the partition suit is pending and the final decree is yet to be passed and even as per the agreement the sale have to be executed only 2 months after conclusion of the final decree application in the partition suit. The particulars of the suit is not produced by either of the parties. Therefore it is contended that the respondent/plaintiff should have filed this suit only after completion of the final decree of the proceedings and not when the partition suit is pending before this Court and therefore no cause of action has arisen for the plaintiff to file this suit and the plaint does not disclose any cause of action and therefore the plaint has to be rejection as per Order 7 rule 11 and Section 151 of CPC.

7. The Learned Counsel for the Respondent/Plaintiff in turn submitted that the petitioners/defendants have admitted the sale agreement and have also

admitted the receipt of Rs.15 Lakhs towards advance sale consideration. Further they have suppressed the receipt of Rs.5 Lakhs which they received at different dates on 31.07.2019 and on 14.08.2020. Totally they had received the amount of Rs.20 Lakhs and were cheating. The respondent/plaintiff by protracting the partition suit and in order to avoid execute of the sale deed as per the agreement. Since a huge amount has been paid towards advance sale consideration and since the respondent/plaintiff is ready and willing to purchase the suit scheduled properties he has file the suit in time. Therefore the plea raised by the petitioners/defendants in their petition to reject the plaint is not in conformity that the conditions laid in U/o.7 Rule 11 of CPC and therefore the petition has to be dismissed.

8. This Court finds that the petitioners/defendants have admitted the execution of the sale agreement dated 31.07.2019 and they have also admitted the receipt of the 15 Lakhs. The subsequent payment of Rs.5 Lakhs on different dates on 31.07.2019 and 14.08.2020 is subject to proof in the suit. On perusal of the terms of the agreement this Court finds that it was agreed by the both parties that the sale shall be executed within 2 months from the date of passing of final decree in the partition suit, after the share was allotted to the petitioners/defendants.

9. Therefore it is clear that it's a contingent contract which should be executed on happening of an and uncertain event. The agreement was entered in the year of 2019 and the petitioners/defendants have cautiously left out to mention about the status of said of the partition suit. At the same time there is also no bar for the respondent/plaintiff to file the suit for Specific Performance before the prescribed time when a huge amount is admittedly received by the petitioners/defendants. It appears that since the respondent/plaintiff issued a paper publication on 16.01.2021, enraged by the said act, the petitioners/defendants have come up with this application to reject the plaint. Except the above contentions no valid grounds has been raised by the petitioners/defendants to reject the plaint.

10. Mere statements that the plaint does not disclosed any cause of action is not sufficient. Though the suit is im-mature, at the same time it is not known when the petitioners/defendants would get the partition suit disposed off. Till then he cannot compel the intending purchaser to keep quite. If the vendor drags on the preliminary partition suit with an intention to evade the sale agreement. Then that would cause severe prejudice to the plaintiff.

11. This court would like to refer the Judgment of the Hon'ble High Court reported in the matter of *T.Rangayya Reddy -VS- V.S.Subramaniya Iyer and others* reported in 40 Ind Cas 429 dated 16.01.1917 in Para no.21 *it is held as follows:*

21. It may be pointed out that in this particular case the further allegations that the 1st defendant fraudulently compromised the previous suit for partition instituted by his co-parceners (defendants Nos. 2 to 5) in order to deprive the plaintiffs of the fruits of their purchase and that the defendants Nos. 2 to 5 have been acting in collusion with him with knowledge of the contract of sale, make defendants Nos. 2 to 5 necessary parties to the action.

12. Both the suits for the partition for Specific Performance can be tried together. In such cases one cannot say that the respondent/plaintiff, the purchaser will have to wait till the partition suit is completed, without certainty. Therefore this Court is of the view that the reason stated by the petitioners/Defendants to reject the plaint does not satisfy the requirement of O.7 Rule 11 of CPC and Section 151 of CPC. Therefore this petition is dismissed with cost.

In the result, this Petition is dismissed with cost.

Dictated to Steno-typist and typed by her on the computer directly, corrected and Pronounced by me in open Court on this the 06th day of July 2023.

**Principal District Judge
Theni.**

Petitioner side witness and documents:-

-Nil-

Respondent side witness and Documents:-

-Nil-

**Principal District Judge,
Theni.**