

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE, THANJAVUR.

PRESENT : ***Thiru.K.Poorana Jeya Anand, M.A., M.L.,***
Principal District Judge, Thanjavur.

Wednesday, the 21st day of August, 2024.
(Thiruvalluvarandu 2055 Sri Kurothi Varudam Aavani Thingal 5th day)

I.A.No.187/2023 in O.S.No.209/2023

Thiruvvarutselva ... Petitioner / Plaintiff

versus

1) Sowmiya

2) Swaminathan

3) Vinoth ... Respondents / Defendants

This Interlocutory Application has come up for final hearing before me on 13.08.2024 and upon hearing the arguments of Mr.V.Balamurali, Learned Advocate appearing for the Petitioner and of Mr.S.Manickavel Pandian, Learned Advocate appearing for the Respondents 2 & 3 and Mr.N.Selvaraj, Learned Advocate on record for the 1st Respondent did not make any representation for filing counter and the 1st respondent remained exparte and upon perusing the available records and having stood over for consideration till this day, this court passed the following...

ORDER

1) The petitioner filed this petition under Order 26 Rule 9 of CPC praying to appoint an Advocate Commissioner to inspect the suit building with the help of qualified PWD Executive Engineer and to file a report with regard to the stability of

the building with plan if any.

2) **The case of the petitioner is that** the petitioner herein is the plaintiff and he filed a suit for damages and compensation of Rs.24,00,000/- from the respondents / defendants. The respondents 1 & 3 are the daughter and son of 2nd respondent respectively. The suit property belongs to the 1st respondent by way of purchase from one T.R.Ramesh and after purchase, she constructed a RCC tiled house and on the assurance and trust given by the respondents 1 to 3, the petitioner entered into a sale agreement with the 1st respondent on 17.06.2021 and the sale consideration was fixed at Rs.47,00,000/- and on the same date itself, Rs.9,00,000/- was paid as advance and the balance to be paid after completing the balance work in the suit property and completed the sale and the same was reduced into writing. Since the 1st respondent failed to complete the balance work in the suit property, the sale consideration was reduced into Rs.45,35,000/- and on 02.09.2021 the 1st respondent executed the sale deed by receiving the entire sale consideration of Rs.45,35,000/-.

3) The petitioner further stated that after execution of sale deed, when the petitioner started to complete the balance work with the help of qualified Engineer, he came to know about the several damages found in and around the suit property and the electrical work, plumbing work, upstairs and windows in the suit property are not in a good condition and during rainy season the walls are in the wet condition and as per the advice of the Engineer, the same was rectified by spending

Rs.4,00,000/-.

4) The petitioner further stated that when the petitioner started to painting work in the suit building, again it was cracked in the outside wall of the suit property which had already been repaired. As per the advice of his Engineer, Building Stability Test was conducted by one Engineer Mr.Logeswaran and he submitted a report and as per his advice, one Structural Engineer Dr.K.Sakthimurugan made an inspection on the constructed building and gave a report stating the observations and conclusion to the petitioner. As per the Structural Engineer's report, Rs.16,00,000/- will be incurred for rectifying the defects in the suit building. So, on 02.06.2023, the petitioner issued an advocate notice to the respondents demanding Rs.24,00,000/- towards compensation. Having received the said notice, they sent a reply notice on 23.06.2023 stating with false averments. So, in order to prove the defects in the suit property, it is necessary to appoint an Advocate commissioner to inspect the suit property along with the PWD Executive Engineer and to file a report by taking building stability test and hence, it is prayed to allow this petition.

5) **On the other hand**, the respondents 2 & 3 have strongly objected all the averments stated in the affidavit and these respondents have no connection with the said sale transaction between the petitioner and the 1st respondent. There is no cause of action arose between the parties and in order to file a suit against these respondents, the petitioner falsely mentioned the cause of action. There is no privity of contract in between the petitioner and the respondents, the suit is not maintainable

in law and there is no right to claim any relief as against this respondents and hence, it is prayed to dismiss this petition.

6) Point that arises for consideration in this Petition is that

Whether this petition is to be allowed as prayed for?

Point :

7) Heard both sides and perused the records.

8) **On careful perusal of the averments of the affidavit and the counter,** the petitioner who is the plaintiff in the main suit has come forward with this petition. The petitioner purchased the suit property from the 1st respondent on 02.09.2021 for a sale consideration of Rs.45,35,000/- without finishing the balance work in the suit building, but as per Government guideline value the sale amount was mentioned as R.25,00.000/- and after purchase, when the petitioner started to finish the pending work with the help of Engineer, he came to know about the damages found in and around the suit property and the electrical work, plumbing work, upstairs and windows in the suit property are not in a good condition and during rainy season, the walls are in the wet condition and the same was rectified by spending Rs.4,00,000/-. During painting work, again it was cracked in the suit building and as per the advice of his Engineer, Building Stability Test was conducted by one Engineer Mr.Logeswaran and he submitted a report and as per his advice, one Structural Engineer Dr.K.Sakthimurugan made an inspection on the constructed building and gave a report stating the observations and conclusion to the petitioner

and so, on 02.06.2023, the petitioner issued an advocate notice to the respondents demanding Rs.24,00,000/- towards compensation and having received the said notice, they sent a reply notice on 23.06.2023 stating with false averments and so, the petitioner wanted to prove the defects in the suit property, the petitioner filed this petition. The respondents 2 & 3 vehemently denied the allegations stated in the affidavit as totally false and since there is no privity of contract in between the petitioner and these respondents, the suit is not maintainable in law.

9) Having considered the facts and circumstances of this case, whether there is any privity of contract in between the petitioner and the respondents, it will be decided during trial only. At the same time, to find out the defects in the suit property, the report of the Advocate Commissioner with the help of the PWD Engineer is necessary to find out the stage and stability of the disputed building with plan if any and hence, this court is inclined to allow this petition as prayed for and thus, the point is answered accordingly.

10) In the result, this Interlocutory Application is allowed;

1) Advocate **Mr.K.PRASANNA**, (M.S.No.2473/2011) is hereby appointed as Advocate Commissioner;

2) The Fee for the Advocate Commissioner is fixed as Rs.25,000/- which is to be paid by the petitioner herein directly to the Advocate Commissioner;

3) The Advocate Commissioner is directed to visit and inspect the petition mentioned property with the help of qualified PWD Engineer after due notice to both

sides and take test with regard to the stability of the building and file a detailed report with plan before this court on or before 23.09.2024.

This Order is dictated by me to the *Stenographer Grade-I* of this Court, directly typed by her in Computer, corrected and pronounced by me in open court, this the 21st day of August, 2024.

Principal District Judge,

Thanjavur.

Draft /Fair Order in
IA.187/2023 in O.S.No.209/2023
PDJ Court, Thanjavur.
D.O.O: 21.08.2024.