

P.R.Krishnan Vs. T.Ruby Christie

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Court : Chennai

Decided On : Jan-24-2013

Judge : Vinod K.Sharma

Appellant : P.R.Krishnan

Respondent : T.Ruby Christie

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

24. 01/2013 CORAM THE HON'BLE MR.JUSTICE VINOD K.SHARMA A.No.3916 of 2012 in C.S.No.424 of 2012 P.R.Krishnan vs. T.Ruby Christie FOR PETITIONER : K.Ramu FOR RESPONDENT : V.G.Suresh ORDER: VINOD K. SHARMA,J., The applicants / defendants 2, 3, 4, 12, 13, 14, 15, 19, 20 and 23 have filed this application under Order XIV Rule 8 of O.S.Rules r/w Order VII Rule 11(a) of the Code of Civil Procedure, for rejection of plaint as against applicants, on the plea, that the plaint does not disclose any cause of action against applicants/defendants.

2. The plaintiff/non applicant has filed suit for recovery of Rs.36,07,500/- (Rupees Thirty Six Lakhs Seven Thousand and Five Hundred only) together with interest @ 9% p.a. from the date of plaint till realization against defendant no.1.

3. The prayer is also for permanent injunction, restraining defendant no.1 from in any manner effecting construction or developing the plaint schedule property and

handing over possession thereof to defendant nos.2 to 23, who have purchased undivided share in the suit property and entered into agreements for construction of residential flats thereon with the 1st defendant, till 1st defendant pays the sum of Rs.36,07,500/- (Rupees Thirty Six Lakhs Seven Thousand and Five Hundred only).

4. It is not disputed, that defendant no.1 is not owner of the property and even according to the pleadings in the suit filed by the plaintiff/non applicant, he is only developing the property.

5. The case of the plaintiff/non applicant is that on 28.03.2010, the defendant no.1 borrowed a sum of Rs.30,00,000/- (Rupees Thirty Lakhs only) for his business and agreed to repay the sum on demand together with interest @ 9% p.a. He also executed a promissory note dated 28.03.2010.

6. It is submitted, that defendant no.1 had entered into an agreement M/s.S.S.Gurumurthi to purchase property to an extent of 2,400 sq.ft. and paid the entire agreed sale consideration. M/s.S.S.Gurumurthi had executed four Power of Attorneys in favour of 1st defendant, authorizing him to deal with the property to an extent of 2,400 sq.ft.

7. The averments made itself show, that the title was not passed on to defendant no.1, as he was only given Power of Attorney holder to deal with on behalf of the owners of the property.

8. If the pleading in the plaint is accepted in totality, the only allegations of the plaintiff/non applicant against defendants 2 to 23 are that they have entered into agreement with defendant no.1 to purchase the property for which money advanced by plaintiff/applicant has been used for development.

9. It is admitted case by the plaintiff/applicant, that no charge over property was created. Therefore, it can hardly be said that the plaintiff/applicant has any claim on suit property. The suit is for recovery of amount advanced on promissory note. Merely by alleging, that the amount for development of the property was advanced by the plaintiff/applicant, does not give any cause of action against defendant

nos.2 to 23. Nor the suit property becomes the subject matter of the suit merely by seeking injunction till receipt of payment, specially when the property is not owned by 1st defendant, as admittedly, he is only a Power of Attorney Holder to act on behalf of the true owners.

10. Even if the averments made in the plaint are taken on its face value, it does not show any cause of action for the plaintiff/non applicant to proceed against defendant nos.2, 3, 4, 12, 13, 14, 15, 19, 20 and 23.

11. Consequently, this application is allowed. The plaint qua defendant nos.2, 3, 4, 12, 13, 14, 15, 19, 20 and 23 is ordered to be quashed. No costs. 24.01.2013
Index: Yes Internet: Yes ar A.No.3916 of 2012 in C.S.No.424 o

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