



C.R.P.(MD)No.2241 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.11.2023

Pronounced on : 09.02.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.2241 of 2023

and

C.M.P.(MD)No.11512 of 2023

Jamuna Rani

... Petitioner/
Petitioner/
2nd Defendant

Vs.

Balakrishnan

... Respondent/
Respondent/
Plaintiff

Prayer : This Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 14.07.2023 made in I.A.No.2 of 2023 in O.S.No.78 of 2021 on the file of the District Munsif Court, Paramakudi and allow the above civil revision petition.

For Petitioner : Mr.D.Senthil

For Respondent : Mr.T.Lenin Kumar



C.R.P.(MD)No.2241 of 2023

WEB COPY

ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.2 of 2023 in O.S.No.78 of 2021 dated 14.07.2023 on the file of the District Munsif Court, Paramakudi, dismissing the application to reject the document unders Ex.A.1 from the evidence.

2. The respondent/plaintiff has filed the above suit claiming the relief of specific performance of the agreement dated 30.06.2000 entered into between the respondent/plaintiff's father and the mother of the first defendant and the revision petitioner/second defendant and for permanent injunction restraining the first defendant and the revision petitioner/second defendant and their men from any manner interfering with the respondent/plaintiff's peaceful possession and enjoyment of the suit property. The revision petitioner/second defendant has filed a written statement taking a defence that the suit sale agreement has been created by forging the signature of their mother and is a rank forgery.

3. When the respondent/ plaintiff was examined as P.W.1, he has produced the suit sale agreement dated 30.06.2000 and the same was



C.R.P.(MD)No.2241 of 2023

exhibited as Ex.A.1. The revision petitioner/second defendant has then filed the present application in I.A.No.2 of 2023 under Section 151 C.P.C. seeking orders to reject the document in Ex.A.1 from the evidence as it is not admissible.

4. The main contention of the revision petitioner/second defendant is that the said document dated 30.06.2000 has been executed, as if it is a sale deed and as such, the said document requires registration under Section 17 of Registration Act and that therefore, the unregistered sale deed cannot be admitted in evidence and as such, the unregistered sale deed already marked as Ex.A.1 is liable to be rejected. The respondent/plaintiff has filed a counter statement stating that Ex.A.1 is only a sale agreement, that the first defendant and the revision petitioner/second defendant, after receiving the portion of the sale amount, have agreed to receive the balance sale price at the time of registration of the document, that since the revision petitioner/second defendant has taken a plea of forgery, there is every possibility for her to prove through the expert opinion, that the revision petitioner/second defendant, without taking any such steps, has raised objections, which are legally unsustainable and that



C.R.P.(MD)No.2241 of 2023

therefore, the application is liable to be dismissed. The learned District Munsif, after enquiry, has dismissed the application. Aggrieved by the said dismissal order, the present revision came to be filed.

5. As already pointed out, the respondent/plaintiff has laid the above suit claiming the relief of specific performance alleging that the mother of the first defendant and the revision petitioner/second defendant have executed the suit sale agreement in favour of the respondent/plaintiff's father. It is pertinent to note that according to the respondent/plaintiff, Ex.A.1 is a sale agreement and whereas, according to the revision petitioner/second defendant, it is a sale deed.

6. As rightly observed by the learned District Munsif, some of the recitals in Ex.A.1 appear that it is a sale agreement and whereas, some other recitals appear that it is a sale deed. At this juncture, it is necessary to refer the above recitals for better appreciation. In the second page of Ex.A.1, the usual recitals found in the sale deed are mentioned and the same are extracted hereunder;

□தாங்கள் அடியில் கண்ட நிலத்தை கிரையம் பெற்று
கொண்டபடியால் ஆண்டாண்டு காலமும் குடும்ப



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C.R.P.(MD)No.2241 of 2023

சந்ததியினர் கிரைய பாத்தியமாக ஆண்டு அனுபவம் செய்து கொள்ளவும் அடியில் கண்ட நிலத்தை தாங்கள் கிரையம் பெற்றுக் கொண்டபடியால் தங்கள் பெயருக்கு பட்டா மாறுதல் செய்து கொள்ளவும் நான் இதன் மூலம் சம்மதிக்கிறேன். வேறு வில்லங்கம் ஏதுமில்லை என்றும் வில்லங்கம் ஏற்பட்டால் என் சொந்த செலவில் தீர்த்துக் கொடுப்பேன் என்றும் உறுதி கூறுகிறேன்.□

7. But in the first page, it has been stated,

□எனக்கு சொந்தமானதும் என் கைவசம் அனுபவத்தில் உள்ளதுமான அடியில் கண்ட நிலத்தை நான் தங்களிடம் செண்ட் 1க்கு ரூ.130/- வீதம் மொத்த செண்ட் 170க்கு மொத்த ரூ.22100/- இருபத்தி இரண்டாயிரத்தினூறு மட்டும் கிரையம் பேசி நான் தங்களிடம் நாளது தேதியில் அட்வான்ஸ் ரூ.17000/- பதினேழு ஆயிரம் மட்டும் பெற்றுக் கொண்டேன். மீதி ரூ.5100/-ம் ஐயாயிரத்தி நூறும் தாங்கள் பத்திரம் பதிவு செய்ய கூப்பிடும் சமயம் பத்திரம் பதிவு செய்து கொடுத்து மீதி பணத்தை பெற்றுக் கொள்ள சம்மதிக்கிறேன்.□

8. As rightly contended by the learned counsel appearing for the respondent, the above recitals in the first page would only refer the sale agreement. Moreover, the title to the document has been given as கிரைய அக்ரிமெண்ட் i.e., sale agreement. Even in the first paragraph of the first page, it has been mentioned that it is only the sale agreement executed by



C.R.P.(MD)No.2241 of 2023

WEB COPY

Meenambal in favour of Ponnusamy.

9. The learned counsel appearing for the revision petitioner would submit that before filing the suit, the respondent/plaintiff has attempted for mutation and at that time, he has produced the said document by alleging that it is a sale deed, but since the same was not accepted, he has filed the above suit alleging that Ex.A.1 is a sale agreement.

10. At this juncture, it is necessary to refer the recent judgment of the Hon'ble Supreme Court in ***Bharat Sher Singh Kalsia Vs. State of Bihar and another*** in ***Crl.A.No.523 of 2024 dated 31.01.2024***, wherein, the Hon'ble Apex Court has held that if there is a repugnant between the earlier and later clauses of a deed, whereby a later clause destroys altogether the obligation created by the earlier clause, then the later clause is to be rejected as repugnant to the earlier clause and the earlier clause prevails and the relevant passage is extracted hereunder;

“30. That apart, we are mindful that even if we had perceived a conflict between Clauses 3 and 11, on the one hand, and Clause 15 on the other, we would have to conclude that Clauses 3 and 11 would prevail over Clause 15 as when the same cannot be reconciled, the earlier clause(s) would prevail over the later clause(s), when



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C.R.P.(MD)No.2241 of 2023

construing a Deed or a Contract. Reference for such proposition is traceable to Forbes v Git, [1922] 1 AC 256⁴, as approvingly taken note of by a 3-Judge Bench of this Court in Radha Sundar Dutta v Mohd. Jahadur Rahim, AIR 1959 SC 24. However, we have been able, as noted above, to reconcile the three clauses in the current scenario.”

11. Applying the above legal dictum, the earlier recital referring to the sale agreement has to prevail over the later clause which refers to the sale deed. As rightly contended by the learned counsel appearing for the respondent, the respondent/plaintiff, by alleging that Ex.A.1 is a sale agreement, has laid the suit for specific performance and never attempted to use the said document as a sale deed.

12. On Considering the above facts and circumstances, the impugned order, dismissing the application seeking orders to reject Ex.A.1 from the evidence, cannot be found fault with. Since the defendants have taken a defence of forgery, it is always open for the defendants to prove their defence. Hence, this Court concludes that the revision is devoid of merit and the same is liable to be dismissed.



C.R.P.(MD)No.2241 of 2023

WEB COPY

13. In the result, this Civil Revision Petition is dismissed and the impugned order passed in I.A.No.2 of 2023 in O.S.No.78 of 2021, dated 14.07.2023 on the file of the District Munsif Court, Paramakudi, stands confirmed. The learned District Munsif, Paramakudi, is directed to proceed with the trial in O.S.No.78 of 2021 and dispose of the same uninfluenced by any of the observation made in the present order. Consequently, connected Miscellaneous Petition is closed. No costs.

09.02.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

1. The District Munsif Court,
Paramakudi.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P.(MD)No.2241 of 2023



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C.R.P.(MD)No.2241 of 2023

K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
C.R.P.(MD)No.2241 of 2023
and
C.M.P.(MD)No.11512 of 2023

Dated : 09.02.2024