

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).Nos.4319 and 4320 of 2014

and

M.P.No.1 of 2014

L.Bhavani

.. Petitioner
in both C.R.Ps

Vs

K.N.Chinnappan alias Rajan

.. Respondent
in both C.R.Ps

Prayer in C.R.P.No.4319 of 2014:Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 10.07.2014 made in I.A.No.124 of 2014 in O.S.No.96 of 2010 on the file of the Subordinate Court, Ponneri.

Prayer in C.R.P.No.4319 of 2014:Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 10.07.2014 made in I.A.No.125 of 2014 in O.S.No.96 of 2010 on the file of the Subordinate Court, Ponneri.

For Petitioner in both C.R.Ps	: Mr.M.V.Muralidharan
For Respondent in both C.R.Ps	: Mr.R.Arumugam for Mr.A.S.Thambuswamy

COMMON ORDER

Challenging the impugned orders passed in I.A.Nos.124 and 125 of 2014 in O.S.No.96 of 2014 dated 10.07.2014 by the Subordinate Court, Ponneri, the present Civil Revision Petitions have been filed.

2.The respondent as a plaintiff filed a suit in O.S.No.96 of 2010 for specific performance, wherein plaintiff's and defendant's side evidence were completed and when the matter was posted for argument, the plaintiff/respondent herein as a petitioner filed applications I.A.Nos.124 and 125 of 2014 to re-open the case and also for examining further witness as if no witness has been examined on the side of the defendant. The Trial Court after hearing both sides has allowed the applications. Aggrieved against the same, these Civil Revision Petitions have been filed by the petitioner/defendant.

3.Heard the learned counsel for the petitioner and the learned counsel for the respondent.

4.Learned counsel for the petitioner submitted that the reason assigned by the petitioner is not true. He would also submit that after the defendant's side evidence has been completed, then only the matter was posted for

argument, but whereas the respondent herein in the affidavit has stated that on the side of the defendant no one has been examined to prove the sale agreement and so, examination of the attester is necessary. The said fact is not correct. But the Trial Court after considering the same has allowed the applications. He further submitted that no person will be permitted to fill up the lacuna in the evidence. That factum was not considered by the Trial Court. Hence, he prayed for setting aside the order passed by the Trial Court.

5. Resisting the same, the learned counsel for the respondent submitted that it is true that in the affidavit it was stated that the defendant was not examined and hence, he was forced to file applications. But whereas in the counter filed in the Civil Revision Petitions, she has stated by oversight she has mentioned as such. He further submitted that the Trial Court has not allowed the applications on the basis that the defendant was not examined as witness before the Trial Court and as per Order XVI Rule 14 of CPC, at any time the witness has to be summoned and examined before the Court. Hence, he prayed for dismissal of the revision petitions.

6. Considered the rival submissions made on both sides and perused the typed set of papers.

7.The respondent as a plaintiff filed a suit for specific performance on the basis of the sale agreement dated 07.06.2004. The petitioner/defendant has raised a plea that the document itself is forged, he has not entered into any sale agreement, the original sale agreement was not filed and only a xerox copy has been filed by the respondent/plaintiff. So, it is a bounden duty of the respondent/plaintiff to prove that the sale agreement is true and genuine. But admittedly the plaintiff's side has been completed, the defendant's side evidence was also examined and when the matter was posted for arguments, the applications in I.A.Nos.124 and 125 of 2014 were filed. The averment in the petition filed by the respondent that since the defendant has not examined the attesor of the sale agresment as the witness, he was forced to file an application for reopen and recall is not correct. It is the duty of the respondent/plaintiff to prove her case because once the defence has been taken that the document is forged and concocted, she ought to have examined the attesor of the document at first to prove that the document is true and genuine and she shall not expect the defendant to prove that the document is forged. That factum has not been considered by the Trial Court while allowing the applications.

8.At this juncture, it is appropriate to incorporate Order XVI Rule 14 of CPC, which is as follows:

14. Court may of its own accord summon as witnesses strangers to suit. Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary ¹[to examine any person, including a party to the suit] and not called as witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession on a day to be appointed, and may examine him as a witness or require him to produce such document.

9. It is not the case that the Court may on its own accord summons to the witness but it is the duty of the respondent/plaintiff to prove the sale agreement in accordance with law. But the plaintiff has not examined the attesor and after examination of the defendant's side witness, when the matter was posted for argument, she filed applications to examine the attesor of the document. It is well settled dictum that no person shall be permitted to examine the attesor to fill up the lacuna in the evidence. That factum was not considered by the Trial Court. Hence, the impugned order passed by the Trial Court is unsustainable and it is hereby set aside. Consequently, the Civil Revision Petitions are hereby allowed.

R.MALA. J.,

cse

10.In the result, the Civil Revision Petitions are allowed. No costs.
Consequently, connected Miscellaneous Petition is closed.

09.12.2015

Index: Yes/No
Internet: Yes/No
cse

To

The Subordinate Court, Ponneri

CRP(PD).Nos.4319 and 4320 of 2014
and
M.P.No.1 of 2014