

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).Nos.3725 and 3726 of 2015
and
M.P.No.1 of 2015

B.V.Anantha Rao

.. Petitioner
in both CRPs.

Vs

Byrappa

.. Respondent
in both CRPs.

Prayer:C.R.P.(PD)No.3725 of 2015 is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 24.08.2015 in I.A.No.477 of 2015 in O.S.No.40 of 2010 on the file of the Subordinate Court, Hosur.

Prayer:C.R.P.(PD)No.3726 of 2015 is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 24.08.2015 in I.A.No.478 of 2015 in O.S.No.40 of 2010 on the file of the Subordinate Court, Hosur.

For Petitioner : Mr.R.Jayaprakash

COMMON ORDER

C.R.P.(PD)No.3725 of 2015 is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 24.08.2015 in I.A.No.477 of 2015 in O.S.No.40 of 2010 on the file of the Subordinate Court, Hosur.

2.C.R.P.(PD)No.3726 of 2015 is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 24.08.2015 in I.A.No.478 of 2015 in O.S.No.40 of 2010 on the file of the Subordinate Court, Hosur.

3.The respondent as a plaintiff filed a suit in O.S.No.40 of 2010 on the file of the Subordinate Court, Hosur for specific performance and also injunction not to alienate the property. The petitioner/defendant filed the written statement and contested the suit. During the pendency of the suit, the petitioner/defendant filed an application in I.A.No.477 of 2015 to permit him to file the document by condoning the delay in filing the document. The revision petitioner/defendant has also preferred an

application in I.A.No.478 of 2015 to recall D.W.1 and permit him to mark the document through D.W.1 for the purpose of eliciting the material evidence in the interest of justice. The trial Court, after hearing both sides, dismissed the applications. Aggrieved over the same, the revision petitioner has preferred C.R.P.(PD)No.3725 of 2015 challenging the impugned order passed in I.A.No.477 of 2015 and preferred C.R.P.(PD)No.3726 of 2015 challenging the impugned order passed in I.A.No.478 of 2015.

4.Learned counsel for the petitioner submitted that while the application for appointment of Advocate Commissioner has been filed by the defendant which was dismissed and against which, he preferred a revision on 07.04.2015 in C.R.P(PD)No.1392 of 2015, wherein in paragraph No.3, it was mentioned that the property mentioned in the sale deed dated 28.05.1969 and the sale agreement dated 03.05.1980 are different. Therefore, to mark that document the petitioner/defendant wants D.W.1 to be recalled. Hence, he prayed for an order.

5.At the time of admission, argument of the learned counsel for the petitioner is heard in length.

R.MALA.J,

cse

6.Since the respondent has filed a suit for specific performance, it is his duty to prove his case. Admittedly, the order in C.R.P(PD)No.1392 of 2015 has formed part of the record of the Trial Court and that can be relied upon without marking as document. So, there is no necessity for marking the document as additional evidence and also for re-calling D.W.1. Therefore, the Trial Court has rightly held that there is no sufficient cause for re-calling D.W.1 and mark this document and dismissed the applications. Hence, I do not find any illegality or irregularity in the orders passed by the Trial Court and the same are hereby confirmed.

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

26.11.2015

Index: Yes/No
Internet:Yes/No
cse

To
The Subordinate Court, Hosur.

CRP (PD).Nos.3725 and 3726 of 2015

and M.P.No.1 of 2015