

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

CRP (PD) No.461 of 2015

And

M.P.No. 1 of 2015

1. Kalimuthu
2. Pazhaniammal .. Petitioners/Defendants/Petitioners

**Vs.**

Chellappan .. Respondent/Plaintiff/Respondent

**Prayer :** Revision Petition is filed under Article 227 of the Constitution of India, against the order and decree dated 21.11.2014 made in I.A.No. 34 of 2014 in O.S.No. 125 of 2013 on the file of the Court of the Additional District Judge, Namakkal.

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For Petitioners : Mr.T.Dhanasekaran

For Respondent : Mr.S.Kalyanaraman

**ORDER**

This Revision Petition is filed challenging the order and decree passed in I.A.No. 34 of 2014 in O.S.No. 125 of 2013 by the Additional District Court, Namakkal, dated 21.11.2014.

2. The respondent had instituted a suit in O.S.No. 125 of 2013 against the petitioners seeking for specific performance of the agreement dated 12.11.2009 and alternatively for return the advance amount of Rs.54,85,000/- along with interest at 8% p.a. The defendants have filed their written statement dated 04.10.2013 and contesting the suit.

3. The defendants filed I.A.No. 32 of 2014 under Order 7 Rule 11(d) and Section 151 CPC read with Section 10 of Indian Contract Act and Section 3 of Transfer of Property Act to reject the plaint. The petitioners have contended that the sale agreement requires attestation of two witnesses, but only one witness signed in the agreement and therefore, it is barred by law. The application was resisted by the respondent by filing a counter. The learned Additional District Judge, Namakkal, dismissed the application. Challenging the order, the present Revision has been filed.

4. Mr.T.Dhanasekaran, learned counsel for the petitioner submitted that as per Section 3 of the Transfer of Property Act, “instrument” means a non-testamentary instrument and it requires attestation by two or more witnesses. The learned counsel further submitted that if the document is not attested by two witnesses, it cannot be relied on for any purpose.

5. Per contra, Mr.S.Kalyanaraman, learned counsel for the respondent submitted that Transfer of Property Act requires some of the documents compulsorily attested by witnesses, but the sale agreement does not require attestation by two witnesses. It is further contended that Section 59 and Section 123 of the Acts deal with mortgage of the immovable property and gift, both the Sections specifically require attestation of those documents by two witnesses. Section 54 of the Act deals with sale of the property, which does not require attestation by two witnesses.

6. The learned counsel further submitted, under Order 7 Rule 11 (d) of CPC if it appears from the statement of the plaint to be bared by law alone can be taken into consideration. As per the averments in the plaint, the suit is not barred by law. The learned counsel relied on the Judgment in ***Karuppiah Mooppanar V. Muthukaruppan Servai*** reported in **88 L.W. 6**. In the Judgement, this Court has held that the Transfer of Property Act does not require a sale deed attested and therefore, it would be unnecessary to prove it by calling an attesting witness.

**K.KALYANASUNDARAM, J.**

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7. Further, the respondent has filed the suit for specific performance and also alternatively prayed for refund of the advance amount. Therefore, I am not able to agree with the contentions of the learned counsel for the petitioner. I do not find any material irregularity and legality in the impugned order.

8. In fine, the Revision petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

06.02.2015

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Index: Yes/No

Internet: Yes/No.

To

Additional District Court, Namakkal.

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