

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.No.782 of 2015

M.Balakrishnan

..Petitioner/Petitioner/ Plaintiff

Vs

1.Jayalakshmi  
2.Rajakumari  
3.Alamelu  
4.Sasikala  
5.Thenmozhi  
6.Jayaraman

..Respondents /Respondents/Defendants

Prayer:- The Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order, dated 30.10.2014 passed in I.A.No.303 of 2014 in O.S.No.121 of 2007 on the file of the Subordinate Court, Thiruvallur.

For Petitioner : M/s.R.Karunakaran

O R D E R

The Civil Revision Petition is directed against the order dated 30.10.2014 passed in I.A.No.303 of 2014 in O.S.No.121 of 2007 on the file of the Subordinate Court, Thiruvallur.

2.The plaintiff in O.S.No.121 of 2007 on the file of the Sub Court, Thiruvallur, is the revision petitioner. The petitioner had instituted the suit against the respondents for specific performance of the oral sale agreement. The defendants have filed their written statement and contested the suit. After the evidence of plaintiff and the defendant was over and when the suit was posted for arguments, the petitioner filed I.A.No.303 of 2014 to reopen the defendant side evidence for further evidence.

3. In the affidavit, filed in support of the application, the petitioner has averred that the first defendant is the owner of the suit property and received the sale consideration, she was not examined as a witness on her side and one Mr.Shankar who is in possession of the second item was present at the time of sale agreement and he was also not examined on the side of the defendants.

4. The petition was opposed by the 1<sup>st</sup> respondent stating that there was no sale agreement as alleged by the plaintiff and they did not receive any consideration. The 6<sup>th</sup> defendant, who is the

husband of the first defendant had already deposed as D.W.1. It is further stated that the plaintiff could not compel the defendant to depose on his behalf. The trial court dismissed the application and aggrieved by the same, the present revision has been filed.

5. Mr.R.Karunagaran, learned counsel for the petitioner submitted that the first defendant had received the sale consideration and it was witnessed by one Shankar, but they were not examined on the side of the defendant. It is further contended that to prove the case of the plaintiff, the first defendant and her son have to be examined as witnesses. The learned counsel has relied upon the Judgment reported in AIR 1993 Pat 122, 1993(41) BLJR 1445 (Sri Awadh Kishore Singh and another vs. Sri Brij bihari Singh and Ors.

6. It is seen that the trial court following the judgment reported in (1999) 1 MLJ Page No.97, wherein this Court has held that the plaintiff cannot compel the defendant to appear as his witness, dismissed the application. In view of the Judgment of this Court, with great respect, I am not able to follow the decision of Patna High Court. The trial court has rightly rejected the petition holding that the plaintiff cannot compel the defendant to depose witness on the side of the plaintiff.

7. I do not find any merits in the case, this Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

To

The Sub Court,  
Thiruvallur.

+1 cc to Mr.R.Karunagaran, Advocate, sR.11180.

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krd 27/3

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