

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.4876 of 2014

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.21.11.2014 in IA.No.2561 of 2014 in OS.No.34 of 2010 on the file of the Principal District Judge, Kadapa.

2. The petitioner herein is plaintiff in the above suit. He filed the suit for specific performance of an agreement of sale dt.05.03.2004, allegedly executed by 1st defendant in his favour in respect of item nos.1 and 2 of the plaint schedule property.

3. The 1st respondent herein filed a written statement taking a plea that there is no specific, valid and binding agreement in existence between himself and petitioner as on 05.03.2004 to file the suit; even if any agreement is in existence, it is only a void agreement and not valid in law. Thus there is no denial of the suit agreement of sale by 1st defendant and his pleading is that it is not valid in the eye of law.

4. Issues were framed and trial commenced.

5. The plaintiff filed IA.No.749 of 2014 to summon the attestors to the suit agreement of sale by taking coercive steps invoking Order XVI Rule 10 (2) CPC. He contended that in spite of service of summons on them,

they refused to come to court and give evidence on his behalf; and therefore, Order XVI Rule 10 (2) and (3) should be invoked against them.

6. Counter-affidavit was filed to the same contending that 1st defendant/1st respondent had not denied the execution of Ex.A.1 and only if there is such a denial, the question of proving its execution by examining attestors would arise; and therefore, the petition be dismissed.

7. By order dt.21.11.2014, the Court below dismissed the said application on the ground that Order XVI Rule 10 (2) requires that the court be satisfied to believe that the evidence or production is material, and that the person who has custody of the evidence, without lawful excuse, has failed to attend or produce it in compliance with the summons or has intentionally avoided service of summons. It held that in the present case, the evidence of attestors is unnecessary because there is no dispute about the suit agreement of sale.

8. Challenging the same, this Revision is filed.

9. The counsel for petitioner contends that the court below erred in dismissing the application, and that the evidence of attestors to the suit agreement of sale is necessary to prove it.

10. I am of the opinion that the said contention is

untenable. The witnesses, whom the petitioner wishes to examine, are attestors to the suit agreement of sale. When the execution of the suit agreement of sale is not denied by 1st defendant, their examination is unnecessary.

11. In any event, it is always open to petitioner to plead that he had taken reasonable steps to examine the attestors of the suit agreement of sale; that they did not turn up; and therefore, the court should not draw an adverse inference against him for their non-examination. Therefore, I do not find any merit in the Revision and is accordingly dismissed. No order as to costs.

12. As a sequel, miscellaneous petitions pending, if any in this Revision, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 06-03-2015

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