

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 22.01.2016**

**CORAM :**

**THE HONOURABLE MS. JUSTICE R.MALA**

**C.R.P.(PD) Nos.4762 and 4763 of 2015**

**And**

**M.P.No.1 of 2015**

**In**

**C.R.P.(PD) No.4762 of 2015**

1.S.T.Moinudeen

2.A.K.Perumal Udayar

... Petitioners in both CRP(PD)s.

**Vs.**

1.Syed Sikandar

2.G.S.Liyakath Ali

3.M.Krishnan

4.M.Uma Maheswari

5.M.Mahaboob Bee

6.K.Sekar

7.G.S.Saleem

8.S.Saradha

9.R.Duraisamy

10.P.Pachamuthu

11.R.Senthil

12.N.Sabapathy

13.K.Divya

14.G.Nagammal

15.D.Rani Mary

... Respondents in both CRP(PD)s.

**Common Prayer:**

Petitions have been filed under Article 227 of the Constitution of India, to set aside the common order and decretal order dated

12.08.2015 made in I.A.Nos.13 and 14 of 2014 respectively, in O.S.No.15 of 2008 on the file of III Additional District Court, Villupuram @ Kallakurichi, and to allow the above Civil Revision Petitions.

For Petitioners : Mr.R.Manickam

### **COMMON ORDER**

Challenging the impugned orders dated 12.08.2015 passed in I.A.Nos.13 and 14 of 2014 respectively, in O.S.No.15 of 2008 by the III Additional District Court, Villupuram @ Kallakurichi, wherein, the prayer for reopening the case and to call the defendants 3 to 15 to give evidence respectively, came to be dismissed, this revision has been filed.

2.At the time of admission, arguments heard in length.

3.The petitioners as plaintiffs filed the suit for specific performance on the basis of the sale agreement dated 23.11.2005 to direct the first defendant to execute the sale deed. The first defendant filed written statement and contested the same and

during the pendency, the petitioners came to know that the property has been sold to the defendants 3 to 15 and they were impleaded as parties. Thereafter, the trial has been commenced and it has been posted for arguments. Since the defendants were represented by the same counsel, the subsequent purchasers were not examined to show that they are the bonafide purchasers. The petitioners herein filed applications for reopening the case and to examine the defendants 3 to 15 and those applications have been dismissed by the Trial Court, after hearing the objections raised by the other side. Challenging the impugned orders, the present revisions have been filed by the plaintiffs/ petitioners herein.

4.The learned counsel for the petitioners would submit that during the pendency of the sale agreement, defendants 3 to 15 have purchased the property and to prove that they colluded with the defendants 1 and 2 and created the document to defraud the plaintiffs/ agreement holders/ the revision petitioners herein, the examination of the defendants 3 to 15 is necessary. That factum was not considered by the Trial Court. Hence, he prayed for setting aside of the impugned order.

5.Considering the arguments of the learned counsel for the petitioners and also on a perusal of the averments in the typed set of papers, notice to the respondents is dispensed with.

6.The petitioners herein as plaintiffs have filed a suit for specific performance on the basis of the sale agreement dated 23.11.2005 stating that the total amount of sale consideration fixed is Rs.19 Lakhs and advance of Rs.2,25,000/- was paid to the first defendant and the first defendant also received another sum of Rs.25,000/- by way of cheque. Even then, he was not ready to perform the part of contract. Hence, after issuance of notice, they filed a suit, but after filing of the suit, they came to know that the property has been sold to defendants 3 to 15. The second defendant is the power holder of the first defendant. Hence, they filed applications to examine the witness. Even though the defendants 3 to 15 were represented by the same counsel who is appearing for the defendants 1 and 2, only defendants 1 and 2 are examined. So, the petitioners have come forward with the applications.

7.It is the well settled dictum of the Apex Court that no

person can be summoned to give evidence against him. Furthermore, it is the duty of the subsequent purchaser to prove that they purchased the property for value without notice of this sale agreement and lease. It is not the duty of the plaintiffs to prove that they colluded with the defendants 1 and 2 and created the document, if the Trial Court has clearly mentioned – para 8 of order, the adverse inference for non examination of defendants 3 to 15 will be drawn. That factum was rightly considered by the Trial Court. Since it is the duty of the plaintiffs/ petitioners to prove that the sale agreement is true and genuine and they are ready and willing to perform their part and contract from the date of agreement till today, but it is not their duty to prove that, that document has been created in collusion with the other defendants.

8. In such circumstances, I am of the view that the examination of the defendants 3 to 15 will not arise. The Trial Court has rightly considered this aspect and came to the correct conclusion stating that no party or person can be compelled to give evidence in Court at the instance of others. Hence, the impugned orders passed by the Trial Court is un-assailable and it is hereby confirmed and the revisions are dismissed as devoid of merits.

**R.MALA,J.**

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9.Accordingly, these Civil Revision Petitions are dismissed and the orders dated 12.08.2015 made in I.A.Nos.13 and 14 of 2014 respectively, in O.S.No.15 of 2008 by the III Additional District Court, Villupuram @ Kallakurichi is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

**22.01.2016**

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Index: Yes/ No

Internet: Yes/ No

To

1.The III Additional District Court, Villupuram @ Kallakurichi.

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4763 of 2015**

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