

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.12.2016

Coram

The Honourable MRS.JUSTICE **PUSHPA SATHYANARAYANA**

C.R.P.PD.No.3023 of 2016

and

C.M.P.No.15305 of 2016

P.Udayakumar

... Petitioner

vs.

1. E. Babu

2. E.Raja

3. E.Ravi

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 02.09.2016 passed in I.A.No.10113 of 2016 in O.S.No.14485 of 2010 on the file of the VIII Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.S.Balasubramaniam

For Respondents: Mr.G.Mohanarangan

ORDER

This Civil Revision Petition is directed against the order refusing to issue Subpoena to the second and third plaintiffs to appear and depose the evidence before the Court.

2. The suit is one for recovery of money. The revision petitioner/defendant had filed a detailed written statement contending that he had not executed any promissory note. Earlier, there was a joint venture between the respondents/plaintiffs and the petitioner /defendant by sharing the profit in the ratio of 60:40 and paid a sum of Rs.3,00,000/- as refundable deposit and also signed in the joint venture agreement agreeing to pay a sum of Rs.7,00,000/- by way of cheque as detailed in the said agreement. The revision petitioner was unable to keep any amount in his account and requested the plaintiffs not to present the cheque and paid a sum of Rs.4,50,000/-and another Rs.20,000/-by cash. The petitioner also mortgaged 60% of the undivided share of land in favour of one C.K.Geevar and obtained Rs.10,00,000/- as loan under Ex.A.4. The said C.K.Geevar had issued notice to the plaintiffs demanding the mortgage amount with interest. Therefore, the plaintiffs had entered into another joint venture agreement with another builder with ratio of 50:50 and received a sum of Rs.20,00,000/- as security deposit. In the process, the petitioner / defendant was not allowed to proceed with the construction. The plaintiffs insisted to handover possession and the petitioner also agreed to discharge the mortgage loan raised by the petitioner and agreed to return the amount of Rs.7,70,000/- paid already at the time of availing mortgage loan from the said

C.K.Geevar. The petitioner also agreed to pay a sum of Rs.7,40,000/- within a period of three months on 19.05.2008 under Ex.A8 and he had also sent a reply notice dated 30.12.2011 calling upon the said C.K.Geevar to handover the documents to the respondents/plaintiffs. However, it was replied on 16.07.2012 that all the documents were handed over to the respondents/plaintiffs. According to the petitioner, only plaintiffs 2 and 3 dealt with the development of the property and they only negotiated with the petitioner in respect of sharing of UDS as well as the other conditions under Ex.A.2. Only the first plaintiff had examined himself as P.W.1, but the transactions were within the knowledge of plaintiffs 2 and 3. Hence, the application to issue Subpoena to the plaintiffs 2 and 3 is taken out by the petitioner/defendant.

3. The said application was contested by the plaintiffs stating that P.W.1 was examined in chief and he was also cross examined. The respondents/plaintiffs paid and discharged the mortgage, which is admitted by the defendant in the written statement as well as in the petition. Hence, there is no necessity to examine the plaintiffs 2 and 3. The petition was dismissed by the learned trial Judge. Aggrieved by the same, the above Revision has been filed by the defendant.

4. It is contended by the learned counsel for the petitioner that the petitioner had not executed any promissory note to the respondents. But, the same was given only to one C.K.Geevar at the time of obtaining mortgage loan on the property of the respondents on the strength of Power of Attorney. The plaintiffs have gained the custody of the said blank promissory notes and filed the above suit. When the second plaintiff has not specifically denied the fact that he had dealt with the petitioner, it is necessary to examine the second and third plaintiffs. However, it is contended by the learned counsel for the petitioner that the trial Judge had not considered the case on merits, but simply dismissed the same as an exercise of procrastination.

5. Order XVI Rule 21 of C.P.C provides one party to the suit to examine the other party as his witness or require him to produce the documents. Order XVI C.P.C confers the wider jurisdiction on the Court to cater to the situation where the party can summon a witness and examine.

5. Therefore, the order of the trial Court refusing to issue Subpoena to the plaintiffs 2 and 2 suffers from material irregularity and the same has to be set aside.

6. Accordingly, the impugned order passed by the Court below in I.A.No.10113 of 2016 in O.S.No.14485 of 2010 dated 02.09.2016 is set aside and this civil revision petition is **allowed** and Subpoena be issued to the plaintiffs 2 and 3 to appear before the Court and depose the evidence. No costs. Consequently, the connected miscellaneous petition is closed.

08.12.2016

Index :Yes

Internet:Yes
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To

The VIII Assistant Judge,
City Civil Court, Chennai.

PUSHPA SATHYANARAYANA.J

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