

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **27.09.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.3024 of 2016 and
CMP.No.15306 of 2016

S.Arumugam

...Petitioner

versus

Kulandai Therasa (died)

Jabamalai Raj (died)

1.Arokiyaraj

2.Gabrial

3.Thomas

4.Maria Joseph

5.Malorbava Mary

6.Lorudh Mary

7.Peter Arokiya Das

8.Martin Therasa

9.Jaya Mart

10.Mary Jagulin

11.Bernath Mary @ Pappathi

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decree made in I.A.No.575 of 2015 in O.S.No.4584 of 2004, dated 23.03.2016 on the file of the III Additional District Munsif, Coimbatore.

For Petitioner : Mr.C.Veerarahavan

ORDER

The petitioner filed a suit for specific performance on the file of the III Additional District Munsif Court, Coimbatore. The respondents denied the execution of Sale Agreement. When the matter was posted for arguments, the petitioner filed an application in I.A.No.575 of 2015 to reopen the case for the purpose of examining the Scribe. The application was dismissed by the learned Trial Judge. Feeling aggrieved, the petitioner is before this Court.

2. The learned counsel for the petitioner contended that the Executor of the document is no more. Similarly, the attesting witnesses are also not alive. It was only in the said circumstances, the petitioner filed the application to summon the Scribe as a witness to prove the document.

3. The document in question is stated to be a Sale Agreement . The Executor as well as the witnesses are not more. Section 69 of the Indian Evidence Act contained detailed provisions as to how document could be proved, in case, primary evidence is not available. Nothing prevented the petitioner from examining the witness who are

conversant with the signature of either the Executor or the attesting witnesses. Moreover, the very petition was filed only during the fag end of the trial. In fact, it was filed only after posting the matter for arguments. This aspect was considered by the learned Trial Judge. I do not find any error or illegality in the order passed by the learned Judge warranting interference by this Court by exercising revisional jurisdiction under Article 227 of the Constitution of India.

4. In the up shot, I dismiss the Civil Revision Petition. No costs. Consequently, connected miscellaneous petition is closed.

27.09.2016

Index:Yes/No

svki
To

The III Additional District Munsif Court, Coimbatore.

K.K.SASIDHARAN, J.

(svki)

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