

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **02.11.2016**

CORAM:

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

C.R.P.(P.D.) No.3203 of 2016 and

C.M.P.No.16247 of 2016

Balasundaram

...Petitioner

versus

A.Duraisamy

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and Decreetal order dated 23.08.2016 made in I.A.No.666 of 2016 in O.S.No.623 of 2010 on the file of the learned Principal Sub Judge, Coimbatore.

For Petitioner : Mr.Abrar Md.Abdullah

For Respondent : Mr.N.Anand Venkatesh

ORDER

The respondent filed a suit against the petitioner on the strength of a promissory note dated 21.11.2005. The suit was contested by the petitioner by filing written statement, wherein a contention was taken that he has not executed any such document.

2. Subsequently, the petitioner filed application in I.A.No.666 of 2016 to issue summons to the District Collector Stamps, Coimbatore and to give evidence as to whether the revenue stamp affixed in Ex.A.1 was available in 2005. The application was dismissed by the trial court. Feeling aggrieved, the petitioner has come up with this Civil Revision Petition.

3. The learned counsel for the petitioner contended that the attempt of the petitioner by filing the application was to convince the trial court that no such stamp was available as on 21.11.2005, and as such, it was evident that the respondent fabricated records to make it appear that the promissory note was executed on 21.11.2005.

4. The learned counsel for the respondent by placing reliance on the order dated 19.01.2016 in I.A.No.449 of 2015 submitted that a similar application was filed earlier and the same was dismissed. The application in I.A.666 of 2016 was another attempt indirectly to prove the contention taken in I.A.No.449 of 2015. The learned Trial Court Judge was therefore perfectly correct in dismissing the application.

5. The suit in O.S.No.862 of 2008 was instituted by the respondent on the basis of a promissory note. The petitioner has

already denied the execution of promissory note. The burden is therefore on the respondent to plead and prove that the promissory note was executed by the plaintiff on 21.11.2005. It is not as if the petitioner is duty bound to prove the negative.

6. Since the suit in question was instituted on the basis of a promissory note, the trial court should be satisfied that the petitioner executed the promissory note. Such being the position, the trial court was correct in rejecting the application filed by the petitioner to summon the District Collector to give evidence with regard to the revenue stamp. I do not find any error or illegality in the order warranting interference by invoking the revisional jurisdiction under Article 227 Constitution of India. However, I make it clear that the dismissal of the application would not amount to admission of the case pleaded by the respondent. In short, it is for the respondent to prove that the promissory note in question was actually executed by the petitioner.

7. The Civil Revision Petition is disposed of with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

02.11.2016

Index:Yes/No
Internet: yes / No
ssd

K.K.SASIDHARAN, J.

ssd

To

The Principal Sub Judge, Coimbatore.

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