



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.R.P(MD)No.2784 of 2015

1.R.Manoharan
2.M.Valarmathy

.. Petitioners /Defendants /
Petitioners

Vs.

R.A.Athmanathan

.. Respondent / Plaintiff /
Respondent

PRAYER: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, against the Fair and Decretal order dated 09.07.2015 passed in I.A.No.27 of 2015 in O.S.No.170 of 2010 on the file of the Sub Court, Thanjavur.

For Petitioners : Mr.P.Velmurugan

ORDER

The fair and decretal order dated 09.07.2015 and made in I.A.No.27 of 2015 in O.S.No.170 of 2015 on the file of the learned Sub Judge, Thanjavur are under challenge in this revision. The revision Petitioners herein are the defendants in the suit in O.S.No.170 of 2010 and appellants in A.S.No.1 of 2012.

2. What it transfers from the averments of the impugned order is that the respondent, one Mr.R.A.Athmanathan had filed the above suit in O.S.No.170 of 2010 on the file of the learned Principal District Judge, Thanjavur and subsequently on the ground of jurisdiction, that was transferred to the file of learned Sub Judge, Thanjavur. The said suit was filed by the respondent as against the revision petitioners for recovery of money to the extent of Rs.6,48,634.20. That suit was originally decreed in favour of the respondent on 16.11.2011. Challenging the judgment dated 16.11.2011, the revision petitioners had preferred an appeal in A.S.No.1 of 2012 on the file of the learned Principal District Judge, Thanjavur on 21.02.2014. That appeal was allowed reversing the judgement of the trial court. The said fact would go to show that the respondent/plaintiff had lost the suit.

3. Now the revision petitioners being the defendants in the suit as well as the appellant in the first appeal in A.S.No.1 of 2012 seems to have filed an application in I.A.No.27 of 2015 under Section 151 of the Code of Civil Procedure to return the original sale deeds, which were marked as Ex-A2 to A7 at the time of trial. This application was filed before the trial court only. A memo of objection was also filed on behalf of the respondent. In the affidavit filed in support of the petition, the revision petitioners have stated that the second revision petitioner viz., Mrs.M.Valarmathi had borrowed a sum of Rs.5,50,000/- from the Indian Overseas Bank on 15.02.2001 by depositing the original sale deeds



stated Ex-A2 to A7 as a surety. They have also contended that the entire loan amount was discharged by them.

4. Under this circumstances, all the original sale deeds were collected by the respondent/plaintiff from the bank after playing fraud on the bank. Since the suit itself was dismissed, after allowing their appeal. Then, they have moved an application before the trial court in I.A.No.27 of 2015 seeking the relief of getting back the above said documents. In the memo of objection the respondent/plaintiff has stated that Ex-A2 to A7 were marked as plaintiff side documents. Further, they have contended that he had been making arrangements to prefer a second appeal before the High Court and that the said documents were required for fair adjudication of the second appeal, which may be filed by them. Besides this he has also contended that already the petitioners had disposed of the properties relating to Ex-A2 to A7 stating that those documents were destroyed suppressing the fact that the documents were filed before the Court. The respondent/plaintiff has also contended that the revision petitioners were entitled to get back the documents as those documents were marked on the side of the respondent/plaintiff. The trial Court had considered the submissions made on behalf of both sides after giving it's careful constrains, it has found that it is true that the sale deeds were produced by the respondent/plaintiff and marked as Ex-A2 to A7 on the side of the respondent/plaintiff. The trial court has also found that the respondent/plaintiff proposed to file the second appeal and under this circumstance the revision petitioners are not entitled to get the original documents viz. Ex-A2 to A7 until the final adjudication of the matter. Only on the above said ground that application was dismissed.

5. Now, Mr. P.Velmurugan, learned counsel appearing for the revision petitioners has submitted that since the revision petitioners being the defendants in the suit were the owners of the documents, the documents ought to have been returned to them.

6. This court has considered his submission along with the averments of the grounds of revision as admitted by the learned counsel, the documents in Ex-A2 to A7 which were marked on the side of the respondent/plaintiff. It is also established that prior to the marking of those documents the respondent/plaintiff was in possession of those documents and since those documents were marked on the side of the respondent/plaintiff and since he proposed to file a second appeal it is not possible at this juncture to return the document to the revision petitioner. But if at all the revision petitioners want to get back the documents, they have to take a separate proceedings and not by this suit. It is open to the revision petitioners to approach the appropriate forum to work out their remedy in the manner known to law.

7. With this observation this Civil Revision Petition is dismissed at the admission stage itself. However, there shall be no order as to costs.

Sd/-

Assistant Registrar

/True copy/



To

The Principal Subordinate Judge,
Thanjavur.

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+1 CC to M/s.Velmurugan, Advocate, SR No.366

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PJL

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