

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

**CRP(PD).No.267 of 2017
and
CMP.No.1174 of 2017**

1.D.Shanmugam
2.D.Varadhan

...Petitioners

Vs.

1.Devaraja Mudaliar
2.N. Srinivasan
3.N. Subbu Iyer
4.Sri Kanaga Kurgai Finance
by its Managing Partner,
having its office at
Door No.92-93
Ekambaranathar Koil Sannadhi Street,
Kanchipuram – 631 502.

5.M/s.Sri Ragavendra Finance
by its Managing Partner,
having its office at
No.99, Salai street,
Kancheepuram 631 502.

....Respondents

PRAYER: Petition filed under Article 227 of The Constitution of India against the fair and decretal order dated 13.06.2016 in I.A.No.372 of 2012 in O.S.No.101 of 2011 on the file of Subordinate Judge, Kancheepuram.

For Petitioner

...

Mr.R.Mubarak Basha

ORDER

There are two plaintiffs in the trial Court, who are blood brothers. The two plaintiffs in the trial court who were unsuccessful by taking out an Interlacutory Application are the Revision Petitioners before

this court. This Revision Petition has been filed under Article 227 of the Constitution of India (herein after referred to as 'COI' for the sake of brevity).

2. The main suit was filed by the revision petitioners before me against nine defendants with prayers inter alia for a declaration that two sale deeds dated 24.08.2001 executed by the first defendant in favour of the defendants 2 and 3 are null and void and also for a preliminary decree for partition. There is also a prayer qua possession. There is another prayer regarding accrued profit.

3. Considering the nature of the order which I propose to pass it may not be necessary to go into those aspects in great detail.

4. In the course of the progress of the suit, particularly in the written statement filed by the second defendant (written statement dated 24.11.2006), it was averred that the first defendant came to know that two plaintiffs have received a sum of Rs.6,00,000/- and Rs.5,00,000/- (first plaintiff and second plaintiff respectively) from the first defendant and they have given an undertaking agreement to the first defendant saying that they would not claim any interest or possession or file any suit with regard to the suit properties. It is alleged that there are two receipts in this regard executed by the two plaintiffs. It was further alleged in the written statement that both the receipts are dated 20.08.2001.

5. Based on this situation, the plaintiffs took out an application being I.A.No.372/2012 with a prayer to send the receipts to Government hand writing expert to find out the genuiness of the signature, as the plaintiffs disputed the signatures in the said receipts.

6. It is to be stated that two receipts have been marked as Ex.B.21 and Ex.B.22 in the trial Court, in the course of trial. Ex.B.21 is the receipt alleged to have been executed by the second plaintiff for a sum of Rs.5,00,000/- and Ex.B.22 is the receipt alleged to have been executed by the first plaintiff for a sum of Rs.6,00,000/-.

7. It is to be noted that the prayer in the I.A.No.372/2012, pertains to Ex.B.22 alone.

8. Be that as it may, the trial Court after full contest, dismissed the above said Interlocutory Application primarily on the ground that there is an unexplained delay on the part of the plaintiffs in taking out the instant application.

9. There are certain other aspects of the evidence Act which may require consideration for deciding an application of this nature. I refraining from saying anything in this regard, in the light of order, I propose to pass.

The Order which I pass is as follows:

a) The order dated 13.06.2016 made in I.A.No.372/2012 (obviously in O.S.No.101/2011) by the trial Court shall not be put against the plaintiffs in the trial further.

b) The above order shall not be put against the plaintiff at the time of arguments.

Though I.A.No.372/2012 is with regard to Ex.B.22 alone, I consider it necessary to extend this to Ex.B.21 also.

(i) All the questions with regard to Ex.B.21 and Ex.B.22 are left open.

10. Though obvious, it is made clear that it is open to the plaintiffs to assail, Ex.B.21 and Ex.B.22 by canvassing all points that may be available to them in law in the course of trial.

In other words, the trial court shall proceed with the trial of the main suit in O.S.No. O.S.No.101/2011 uninfluenced by the order dated 13.06.2016 in IA.No.372/2012.

Civil Revision Petition is disposed of in the above terms. Consequently, connected civil miscellaneous petition is closed. No costs.

03.04.2017

Speaking / Non-speaking order
Index : Yes/No
gv/sai

M. SUNDAR,J.,
gv

To

The Subordinate Judge,
Kancheepuram.

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