

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.4316 of 2015 &
M.P.No.1 of 2015

1.Durlop Chopra
2.Mrs.Seema Chopra

.. Petitioners

Vs.

S.Venkatesan

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set-aside the order dated 14.09.2015 made in I.A.No.205 of 2015 in O.S.No.91 of 2011, pending on the file of III Additional District Judge, Tiruvallur at Ponnammallee.

For Petitioners : Mr.P.C.Hari Kumar
For Mr.P.C.Hari Kumar Asso.

For Respondent : No appearance

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 14.09.2015 made in I.A.No.205 of 2015 in O.S.No.91 of 2011, on the file of III Additional District Judge, Tiruvallur at Ponnammallee.

2. The petitioners are defendants and respondent is the plaintiff in O.S.No.91 of 2011. The respondent filed the suit for specific performance of agreement of sale, dated 07.03.2009 and for permanent injunction against the petitioners from alienating the suit schedule property to any other third parties, except respondent. The petitioners filed written statement on 15.10.2002 and are contesting the suit. The trial commenced. The evidence on behalf of respondent was let in and closed. At that stage, the petitioners filed I.A.No.205 of 2015 for permission to the petitioners to examine the Inspector of Police, Madhuravoyal Police Station, Chennai in connection with Crime No.665 of 2012, prior to the petitioners' examination in the suit under Order XVIII Rule 3(A) of C.P.C. read with Section 151 of C.P.C.

3. According to the petitioners, agreement of sale was obtained by the respondent by threat and coercion and he has given complaint to the Inspector of Police, Madhuravoyal Police Station, Chennai, and the same has been registered in Crime No.665 of 2012. If the Inspector of Police is examined as a witness to depose about the threat and coercion used by the respondent for

execution of agreement of sale, there will not be necessity for the petitioner to examine himself. As per the Evidence Act, documentary evidence excludes oral evidence.

4. The respondent filed counter affidavit and opposed the said application. The respondent stated that the petitioners have not pleaded in the written statement that the suit agreement of sale was obtained by threat and coercion. The suit is filed for specific performance. The respondent's evidence was closed. The suit was posted for evidence on behalf of the petitioners' side. This application is filed only to drag on the proceedings and they have no case on merits and they are feeling shy to get into the witness box to give evidence.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, dismissed the application holding that if a person is voluntarily willing to give evidence on behalf of the petitioners, he can be examined, after petitioners being examined as witnesses. The petitioners are seeking to examine the Inspector of Police, Madhuravoyal Police Station, Chennai, to prove that the agreement

of sale was obtained by the respondent by threat and coercion. To prove this contention, the petitioners can examine the Inspector of Police, Madhuravoyal Police Station, Chennai, only after the petitioners deposing evidence before the Court as a witness.

6. Against the order dated 14.09.2015 made in I.A.No.205 of 2015 in O.S.No.91 of 2011, the present civil revision petition is filed by the petitioners/defendants.

7. The learned counsel for the petitioners submitted that as per the earlier order, the petitioners filed I.A.No.103 of 2015 under Order XVI Rule 1A for issuing summons to Inspector of Police to give evidence on his behalf. The learned Judge failed to see that it is a discretion of the petitioners to examine the witness in the order, he chooses. The provision under Order XVIII Rule 3 A is only directory and it is not mandatory. The learned Judge erred in dismissing the application that the petitioners can examine the Inspector of Police, after his evidence. The earlier application filed by the petitioners under Order XVI Rule 1 of C.P.C. was dismissed by the Court on the ground that the petitioners without obtaining permission from the Court under Order XVIII Rule 3A of C.P.C.,

cannot examine the Inspector of Police. In view of the earlier order dated 08.06.2015 passed in I.A.No.103 of 2015, the learned Judge erred in dismissing the application. The learned counsel for the petitioners relied on the judgment reported in **2008 (1) CTC 36** and submitted that as per the said judgment, the order of the learned Judge has to be set-aside.

8. There is no representation on behalf of the respondent. Heard the learned counsel for the petitioners and perused the materials available on record.

9. The petitioners have come out with present Civil Revision Petition, challenging the order dated 14.09.2015 passed in I.A.No.205 of 2015 in O.S.No.91 of 2011, filed by them, seeking permission to examine the Inspector of Police, Madhuravoyal Police Station, before they examined themselves as witnesses. According to the petitioners, they have given complaint against the respondent alleging that the suit sale agreement was obtained by threat and coercion by the respondent. If the Inspector of Police, Madhuravoyal Police Station is examined as witness first, there may not be any necessity to examine the petitioners as witnesses.

To decide the issue in Civil Revision Petition, it is necessary to refer Order XVIII Rule 3A of C.P.C. for better appreciation:-

Order XVIII Rule 3A

"Party to appear before other witnesses.-

Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for reasons to be recorded, permits him to appear as his own witness at a later stage."

A reading of this Rule would clearly shows that the Court has discretion to permit the party to examine any other witness before he / she is examined as a party. The learned Judge has to record reasons for passing order either allowing or dismissing the application. In the present case, the learned Judge has rejected the request of the petitioners to examine the Inspector of Police, Madhuravoyal Police Station, before examining the petitioners as witnesses. The learned Judge held that the petitioners can examine the Inspector of Police, after they are examined themselves and dismissed the application. The learned Judge exercised his discretionary power under Order XVIII Rule 3 A of C.P.C. and has

given valid reasons for rejection. In these circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 14.09.2015.

10. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

27.06.2017

Index : Yes.

Internet : Yes.

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V.M.VELUMANI, J.

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To

The III Additional District Judge,
Tiruvallur, Ponnammallee.



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