

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2017

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

CRP PD Nos.75 and 76 of 2015
and
M.P.Nos.1 and 1 of 2015

Shardharam Automobiles & Finance
rep.by Mr.M.R.R.Sethuraman

.. Petitioner in
both CRPs.

vs

1. Manivasagam
2. Sivagnanam
3. Chinnappa Mudaliar

.. Respondents in
both CRPs.

Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and decreetal orders dated 28.08.2014 passed by the learned II Additional District Judge, Chidambaram in I.A.Nos.234 and 235 of 2013 in O.S.No.1 of 2003.

For Petitioner : Mr.Srinath Sridevan
in both CRPs.

For Respondents : Mr.P.R.Thiruneelakandan
in both CRPs. for R1
R2 - Not ready in notice

R3 - Died [steps due]

COMMON ORDER

The plaintiff in O.S.No.1 of 2003 is the revision petitioner in both the revisions.

2. The revision petitions are filed challenging the order passed by the Court below in permitting the respondents/defendants to file an additional document by re-opening the defendants' side evidence.

3. The brief facts of the case is as follows:

(i) The revision petitioner/plaintiff filed the suit seeking specific performance of the agreement to sell dated 18.05.1999; to direct the first defendant to execute and register the sale deed in favour of the plaintiff after receiving the balance consideration and for delivery of possession.

(ii) The defendants filed the written statement.

(iii) Thereafter, after trial, the matter was posted for arguments. At that stage, the above applications have been filed by the respondents/defendants contending as follows:

(a) The plaintiff claiming themselves as a registered partnership firm has filed the suit through its Managing Partner. But they have not furnished any details about the registration of the firm or its registration number. PW1, who is the Managing Partner of the firm has deposed that the firm has been registered and the Registration No.is 19/1996. However, no document was produced evidencing the same.

(b) On verification with the office of the Registrar, it is stated that the plaintiff firm was not registered at any point of time. Hence, the defendants have obtained information from the Registrar through Right to Information Act. They were also issued with a letter by the District Registrar, Chidambaram in Pa.Mu.A.N.4077/Aa1/09 dated 16.11.2009. In the said letter, the District Registrar has categorically stated that there was no

firm registered in the name of Saradharam Automobiles and Finance, whereas there is one firm, which has been registered in the name of Saradharam Automobiles under Registration No.58/1992.

(c) If the plaintiff firm is not a registered one, then as per Section 69 of the Indian Partnership Act, 1932, the suit is not maintainable. Therefore, for the said purpose, the defendants have taken out the applications for re-opening of the defendants side evidence to mark the said document.

(iv) The said applications were resisted by the revision petitioner/plaintiff by contending that the firm was registered as Saradharam Automobiles vide Registration No.58 of 1992, which deed enables the firm to carry on the business. It was further contented that after 14 long years of filing the suit and full trial is over, the present applications have been taken out by the defendants, which are vexatious and devoid of merits. Insofar as the evidence given by PW1, with respect to the registration number is concerned, it was a mistake committed due to

oversight and that cannot be put against the plaintiff firm and therefore, the defendants cannot be allowed to re-open the case at this length of time.

(v) The learned trial Judge, who heard the applications had allowed the same. Aggrieved by the same, the present revisions are filed.

4. The learned counsel for the revision petitioner would submit that if at all the respondents had felt that the document referred to by them goes to the very root of the matter, they should have taken steps to produce the same at the earliest and confronted PW1 with the same, at the time of cross examination, during arguments. Accordingly, he prayed for setting aside the orders passed by the court below.

5. Whereas the learned counsel appearing for R1 submitted that the learned trial Judge after considering the arguments advanced on either side, had allowed the applications, warranting no interference in these revisions.

6. Heard the learned counsel for the revision petitioner and the learned counsel appearing for R1.

7. Be that as it may, the respondents/defendants are only seeking to mark the document with respect to the registration of the plaintiff's firm. Undoubtedly, it goes to the root of the matter, as an unregistered firm, the suit filed by the plaintiff cannot be maintained. PW1 has also deposed differently with respect to the registration number. Therefore, to clarify any doubt and to have a proper adjudication, the trial court thought it fit to re-open the defendants side evidence for the purpose of marking the said document. Certainly, the plaintiff would be prejudiced as the matter is being re-opened after 14 long years after the suit was filed and that too, at the time of arguments.

8. It is also a well settled principle that Order 18 Rule 17 Code of Civil Procedure application should not be ordered for the mere asking of the parties and it should be judiciously considered. It is for the trial Court to decide as to whether the

re-opening of the case will be fatal or not at the stage of arguments. Since the respondents/defendants have expressed upon the Court that the marking of the document that was obtained by them through RTI will go to the root of the matter, the learned trial Judge has allowed the applications.

9. In view of the same, this Court finds no infirmity in the orders passed by the Court below to interfere with the same. However, considering the length of the time, after which the applications have been filed by the respondents/defendants, the plaintiff would be seriously prejudiced. Hence to compensate the same, the defendants have to be put on terms.

10. Accordingly, while confirming the orders passed by the Court below, this Court is inclined to direct the first respondent/first defendant to pay a sum of Rs.5,000/- [Rupees five thousand only] to the revision petitioner/plaintiff, as costs, within a period of four weeks from the date of receipt of a copy of this order.

11. With the above direction, both these Civil Revision Petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

30.01.2017

vj2

Index: yes/No

Internet: yes

To

The II Additional District Judge
Chidambaram.

PUSHPA SATHYANARAYANA,J.,

vj2

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