

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **04.04.2017**

CORAM:

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

C.R.P.(P.D.) No.2189 of 2013

Balakrishnan : Petitioner
versus

Ramasamy Reddiar : Respondent

PRAYER: Revision filed against the order dated 07.03.2013, in I.A.No.604 of 2012 in O.S.No.141 of 2011 on the file of the Principal Subordinate Judge, Vridhachalam.

For petitioner :: Mr.J.Anthony Jesus

For respondent :: No appearance

ORDER

The petitioner, in a suit for specific performance, filed an application in I.A.No.604 of 2012 to send for certain documents from the file of the District Munsif cum Judicial Magistrate Court, Thitakkudi so as to enable him to take steps to send the documents for expert opinion. The Trial Court having found that the documents are in the custody of another Court, dismissed the application. The said order is under challenge in this revision petition.

2. Heard the learned counsel for the petitioner. None appears on behalf of the respondent.

3. The petitioner filed a suit for specific performance on the strength of an agreement stated to have been executed by the respondent. Before the Trial Court, the respondent contested the very agreement, on the strength of which, the suit was filed. The petitioner having found that the very same respondent earlier filed a suit in O.S.No.403 of 2000 before the learned District Munsif, Thitakudi and the application for execution of decree in E.P.No.97 of 2005, filed an application in I.A.No.604 of 2012 to summon those documents. The documents were summoned for the purpose of sending it to the expert for opinion. Such a step was found necessary in view of the stand taken by the respondent that he has not executed the sale agreement in question.

4. The learned Trial Judge was of the view that the documents sought to be produced from another Court cannot be marked or sent for comparison. The learned Trial Judge permitted the petitioner to obtain certified documents and produce the same in evidence.

5. The application in I.A.No.604 of 2012 was taken by the petitioner only on account of the stand taken by the respondent that he has not

executed the sale agreement. The fact that the document is in the possession of another Court cannot be a reason to dismiss the application filed by the petitioner. I am therefore of the view that the issue requires fresh consideration by the learned Trial Judge.

6. The petitioner is permitted to file an application before the District Munsif, Thitakudi, to obtain copies of the plaint in O.S.No.403 of 2000 and the related execution petition in E.P.No.97 of 2005 and produce the same before the learned Principal District Judge, Virudachalam. The learned Trial Judge is directed to consider the application in I.A.No.604 of 2012 thereafter, on merits and in accordance with law.

7. The impugned order is set aside for fresh consideration as indicated above.

8. The civil revision petition is allowed to the extent indicated above.
No costs. Consequently, M.P.No.1 of 2013 is closed.

04.04.2017

Index:Yes/no
tar

To

The Principal Subordinate Judge, Vridhachalam.

K.K.SASIDHARAN, J.

(tar)

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