

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2017

CORAM

THE HONOURABLE DR. JUSTICE P.DEVADASS

C.R.P.(PD). Nos.2867 and 2868 of 2012

1. Karunathal
2. K.Sundaramoorthy
3. K.Jayabal
4. J.Latha
2867/2012

...Petitioner in CRP No.

Karunathal
2868/2012

...Petitioner in CRP No.

Vs

1. Ramathal

2. R.Kumarasanmugam

... Respondents in both CRPs

Civil Revision Petitions filed under Article 227 of the Constitution of India praying to set aside the order dated 23.02.2012 passed in I.A.No.7 of 2012 in O.S.No.418 of 2009 & I.A.No.8 of 2012 in O.S.No.391 of 2009 on the file of Sub Court, Perundurai.

For Petitioner : A.K. Kumarasamy

For Respondent : G. Vivekanand

COMMON ORDER

In these two CRPs, as the factual matrix is analogous and the question of law is same and the parties are also same, they are heard together and are being disposed of by this common order.

2. The defendant is the owner of certain extent of lands situated in Vellode village in Perundurai Taluk in Erode District. Plaintiffs/ Respondents are the legal heirs of one Ponnusamy, who has entered into two registered sale agreements with the defendants on 23.6.2004 and 16.06.2006 respectively. The said Ponnusamy's legal heirs have filed the suits for specific performance in O.S.Nos.418 and 391 of 2009. The defendants filed their written statement in each suit resisting the claim of the plaintiffs. Issues were framed. The suits were put on trial simultaneously. P.W.1. deposed in chief and exhibited his side of documentary evidence. The defendant has to cross examine P.W.1.

3. At this juncture, the defendant filed additional written statement in each suit raising the plea that the defendants have

borrowed certain sum of money from Ponnusamy and as a security, sale agreements have been obtained from the defendant. This petition was opposed to by the plaintiffs.

4. After hearing both sides, the trial court dismissed the petitions to receive additional written statement since it is putting up of a new case.

5. The learned counsel for revision petitioner read paragraph 12 in the main written statement, wherein it is stated that the sale agreement is fabricated and created one and would contend that the plea now additionally raised by way of the additional written statement is in furtherance of the said plea and he is not putting up any new case.

6. The learned counsel for revision petitioner would also contend that even inconsistent pleas can be taken by the defendant when it is not mutually destructive.

7. In this connection, the learned counsel for the revision petitioner would cite O.C.PERIYASAMY V. D.VENKATESAN @ RAVI [2010 (5) CTC 207].

8. However the learned counsel for the respondents / plaintiffs would contend that it is an attempt to prolong the matter when especially the sale agreements are registered. When he pleads fraud, then there will be change in the burden of proof and the plaintiffs will be prejudiced.

9. I have considered the rival submissions and perused the impugned order, materials on record and the decision cited.

10. This matter arises out of a petition to receive additional written statement filed by the defendants. The merits of the plea, now raised cannot be decided in a petition like this. It should be appreciated by the trial Court only at the appropriate stage of the case.

11. In this case, the genuineness of the sale agreements are in issue. They are registered documents. That is a different matter. In the main written statement itself, the defendant took up the plea that the sale agreement is fabricated and created and only in furtherance of the said plea, now, he raises the present plea that it was obtained as a security for the loan transactions between both sides.

12. The genuineness of the sale agreement has been challenged in the main written statement itself. The plea taken in the additional written statement is in furtherance of his plea. And still the onus is upon the defendant to prove this additional plea because it is his plea and because it is his version of the case because it is his side of the coin. The true colour of it could be known only on his showing only on his letting in relevant evidence.

13. In the facts and circumstances, this Court is of the considered view that an opportunity could be given to the defendant to raise the plea, as mentioned in the additional written statement instead of being nibbling it in the bud on some technical grounds.

14. In view of the foregoings, ordered as under:

(i) These Revisions are allowed;

(ii) The order of the learned Sub-Judge, Perundurai passed in I.A.No.7 of 2012 in O.S.No.418 of 2009 & I.A.No.8 of 2012 in O.S.No.391 of 2009 are set aside.

(iii) The said I.As stand allowed.

(iv) The trial court will receive the additional written statements on record.

Dr.P.DEVADASS,J

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(v) The plaintiffs shall be given an opportunity to file their reply statements, if any.

(vi) As these suits are of the year 2009, the trial Court will expeditiously try and dispose of the suits preferably within four months from the date of receipt of a copy of this order.

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08.03.2017

To

1. The Principal District Judge, Erode
2. The Sub-Judge, Perundhurai, Erode District

Copy to

1. The Registrar (Judicial)
2. The Assistant Registrar (Appellate side)
High Court, Madras.

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