

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION Nos.2182 and 2190 of 2017

COMMON ORDER:

1) C.R.P.No.2190 of 2017 is filed, against the order dated 30.01.2017, passed in I.A.No.901 of 2016 in O.S.No.270 of 2012 on the file of the Additional Senior Civil Judge, Tirupati, wherein an application filed under Section 151 of C.P.C. to re-open the suit was dismissed.

2) C.R.P.No.2182 of 2017 is filed, against the order dated 30.01.2017, passed in I.A.No.903 of 2016 in O.S.No.270 of 2012 on the file of the Additional Senior Civil Judge, Tirupati, wherein an application filed under Section 45 of the Evidence Act to send the agreement of sale for expert opinion was dismissed.

3) Since the issue involved in both the Civil Revision Petitions filed under Article 227 of the Constitution of India are interconnected, they are disposed of by this common order.

4) The facts in issue are as under:

The plaintiff filed the above suit seeking specific performance of contract in directing defendants 1 and 2 to come and execute a regular sale deed in terms of agreement of sale by receiving balance sale consideration of Rs.2,00,000/- and further to direct the defendant Nos.1 and 2 to deliver possession of the plaint schedule property. After completion of the defendants'

evidence and when the matter is posted for arguments, the petitioner/plaintiff filed I.A.Nos.903 of 2016 and 901 of 2016 seeking re-open of the matter and to send the agreement of sale for an expert opinion alleging that at the time when DW.1 was cross-examined he denied the signature on the suit agreement and also thumb impression of defendant No.1.

5) A counter came to be filed by the defendants contending that at the fag end of trial the present applications came to be filed only to drag on the proceedings.

6) After considering the rival submissions made, the trial Court dismissed the above two applications. Challenging the same, the present Civil Revision Petitions are filed.

7) The main ground urged by the learned counsel for the petitioners is that only after DW.1 denied his signature on the suit document, the petitioner realised the same and filed these two applications. It is urged that there is no delay in filing the present applications.

8) As seen from the record, after completion of trial and when the case is posted for arguments, the present applications came to be filed for re-opening the suit and for sending the suit document for an expert opinion. The contents of the affidavit filed in support of the petition would show that for the first time DW.1 disputed his signature during the cross-examination of DW.1.

It is to be noted here that in the written statement filed by DW.1 it has been specifically mentioned as under:

“The allegations in para No.5 of the plaint that the plaintiff accepted to offer the first defendant on 05.03.2007 and the first defendant sold plaintiff schedule property by receiving the advance sale consideration of Rs.1,00,000/- and the defendant Nos.1 and 2 executed agreement of sale on 05.03.2007 in favour of the plaintiff by accepting to execute sale deed on or before 04.06.2009 by receiving the balance sale consideration are all not true and correct and the plaintiff is put to strict proof of the same.

This defendant submits that knowing fully aware about the sale deed in the name of the third defendant the plaintiff might have created the suit document with the active connivance of the third defendant and got filed the suit.”

9) The same version is spoken to even in the Court also. It is also to be noted here that the written statement was filed on 07.11.2012, denying the execution of the agreement of sale. In the cross examination, PW.1 clearly states about the legal notice issued by him intimating about the execution of sale agreement prior to filing of the suit. But the same was not proved and no documents are filed to show that this document was served on defendant Nos.1 and 2. No steps for sending the said document ie. Agreement of sale to the handwriting expert was taken at an earlier point of time. No reasons are given as to why necessary measures were not taken in the year 2012, when the written

statement was filed disputing the execution of agreement of sale. Therefore, filing of the present applications at the belated stage more so when the case is posted for arguments cannot be entertained. The genuinity or otherwise of the suit document will be taken into consideration by the trial Court while appreciating the evidence on record.

10) Accordingly, both the Civil Revision Petitions are dismissed. There shall be no order as to costs.

11) There shall be no order as to costs. Miscellaneous Petitions, if any, pending in these Civil Revision Petitions, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

20.06.2017
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