

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.1297 OF 2017

ORDER:

The Civil Revision Petition is filed questioning the order dated 13.02.2017, passed by the Principal District Judge, Nellore in I.A.No.386 of 2016 in O.S.No.116 of 2011.

It is the case of the petitioner that he is the defendant in the suit in O.S.No.116 of 2011. The petitioner had filed an application in I.A.No.386 of 2016 in O.S.No.116 of 2011 seeking to send the agreement of sale dated 21.09.2009 alleged to have been executed by him to the hand writing expert. The suit is at the stage of cross-examination of the D.W.2.

It is the contention of the learned counsel for the petitioner-defendant that the petitioner never executed the agreement of sale dated 21.09.2009 on the basis of which the respondent plaintiff had filed the above said suit for specific performance while admitting that there was an agreement of sale dated 20.09.2009. This aspect of the matter is made clear in the written statement itself and there being no agreement of sale dated 21.09.2009 and the same is fabricated which can be ascertained only by sending the agreement dated 21.09.2009 on which basis the said claim has been laid. The said I.A. was opposed by the respondent-plaintiff on the ground that the evidence has already been recorded and as a matter of fact the petitioner-defendant in his cross-examination had admitted the execution of the agreement of sale dated 21.09.2009 and at this stage, he cannot be allowed to take a contra stand. The Court below having considered the material on record dismissed the same holding that "(ii) And in the evidence of the petitioner, agreement of sale dated 21.09.2009 marked as Exhibit A.1 was confronted to him by respondent, and for this petitioner made statement as under-

"Exhibit A-1 is the suit agreement of sale executed by me having received Rs.5,00,000/- from plaintiff towards advance....."

At the outset, the above reasoning of the Court below cannot be found fault in any manner. In addition, it may also be noted that a perusal of the written statement does not disclose at any point of time, petitioner-defendant taken a plea that there exists no agreement of sale dated 21.09.2009. What all has been stated in the written statement is that the defendant had executed an agreement of sale dated 20.09.2009 in the absence of a specific plea that there was no agreement of sale dated 21.09.2009 executed cannot be read into the written statement. It is always possible for existence of two agreements. However, the assertion of the Court below only for the purpose of probability of the case. In the facts of the present case, the Court below had dismissed it specifically taking into consideration of the material which is available on record including the evidence in which certain answers were elicited from the petitioner in the process of cross examination. What would be the effect of what has been spoken to, in the evidence, is a matter for consideration at the time of final arguments of the case. In those circumstances, the same cannot be the reason for setting aside the order of the Court below refusing to send the alleged document for expert's opinion.

Accordingly, the civil revision petition is dismissed. However, it is made clear that the observations made herein shall not be taken as forming part of any conclusive opinion in relation to the merits of the case particularly the appreciation of evidence as the final decision is to be taken based on the totality of the evidence adduced before the Court below. Miscellaneous Petitions, if any pending in this civil revision petition shall also stand closed. No order as to costs.

CHALLA KODANDA RAM

Date:07.07.2017
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