

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO
CIVIL REVISION PETITION Nos.4167 and 4287 of 2017

COMMON ORDER:

These two Civil Revision Petitions are being disposed of by this Common Order as the parties are the same and they arise out of the same suit.

The petitioner herein is the defendant and the respondent is the plaintiff. O.S.No.139 of 2008 was filed for specific performance of the agreement of sale dt. 21.07.2007 in respect of an extent of Ac.4.84 cents of dry land situated in Sy.No.396/3 of Chinnaganjam Village, Chinnaganjam Mandal, Prakasam District.

The evidence on behalf of the plaintiff and defendant was completed. After completion of the evidence, at the instance of plaintiff, DW.1, who was recalled and standing for cross examination. At this stage, the defendant filed two applications namely I.A.No.514 and 515 of 2017 for recalling Dw.1 and for grant of leave for receiving the documents. Since the two applications were dismissed by Common Order dt. 15.06.2017, these two Civil Revision Petitions were filed.

The defendant in support of her application in I.A.No.514 of 2017 for recalling DW.1 to adduce further evidence stated that the property was agreed to be sold to the plaintiff to discharge the debts incurred by her husband, who died after contracting debts, and the plaintiff failed to pay the balance consideration even after 8 months of due date. Since the creditors are pressing for

discharge of the debts, the schedule property was sold to 3rd party, discharged the loan to the bank, the decretal amount in O.S.No.14 of 2006, those receipts were misplaced in her previous Advocate's counsel office and now she obtained and filed the same along with the petition. In order to mark those documents, she sought a direction to permit her to adduce further evidence.

A counter affidavit was filed by the plaintiff stating that the documents sought to be produced are not filed along with the Written Statement, but they are pressed into service now.

The trial Court after hearing both the counsel dismissed the applications with the following observation:

“ Even assuming that the proposed documents are genuine documents, the said documents are no way helpful to decide the controversy involved in the suit filed for specific performance of contract. Moreover, there is no reference in the written statement filed by the petitioner/defendant about the proposed documents. In the said circumstances, allowing these two I.As for recalling DW.1 so as to mark the proposed documents and for leave of the Court to receive the proposed documents, will not serve any purpose. Considering the above discussed circumstances, this Court is of the opinion that only to drag on the suit filed in the year 2008, these two I.As are filed by the petitioner/defendant. Accordingly, this Court find no merits in the petition.”

This Court called for the deposition of Dw.1 and in her deposition, she admitted the execution of the agreement and receipt of Rs.1,00,000/- at the time of agreement of sale on 21.07.2007. She also stated that in the year 2008, she executed G.P.A-cum-Sale in favour of 3rd party in respect of plaint schedule property without written cancellation of Agreement of Sale Dt. 21.07.2007. When this Court perused the Written Statement, she stated that unable to bare the pressures from the creditors of the defendant and other sharers, all of them sold the schedule land under a registered sale agreement-cum-G.P.A. on 29.05.2005.

In the light of the above evidence, this Court also endorses the view taken by the trial Court that the documents now sought to be produced evidencing discharge of debts by recalling the defendant as Dw.1 is not relevant and necessary and more so when the suit is at an advanced stage as the evidence of plaintiff and defendant was completed.

Accordingly, these two Civil Revision Petitions are dismissed confirming the Order of the Trial Court.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Date: 03.11.2017

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A.RAMALINGESWARA RAO, J



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Dt.03-11-2017

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