

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.5865 OF 2016

ORDER:

The civil revision petition is filed challenging the order dated 08.11.2016, passed by the I Additional Senior Civil Judge, Nellore in I.A.No.737 of 2016 in O.S.No.84 of 1989, wherein and whereby the application filed by the petitioners under Section 151 C.P.C read with Section 94(e) of CPC, praying to reopen the suit for the purpose of filing a petition under Order XXXIX, Rule 7 CPC, was dismissed.

Heard the learned counsel for the petitioners and none appeared for the respondent.

The brief facts of the case of the petitioners is that the petitioners 2 to 4 are the plaintiffs in O.S.No.84 of 1989 filed on the file of I Additional Senior Civil Judge, Nellore, for specific performance of agreement of sale. Initially, 1st respondent was arrayed as first plaintiff in the suit. Thereafter, the first respondent filed an application before the Court below denying signing of the plaint copy as well as the Vakalat and further denying any agreement of sale having been obtained in his name from the respondent/defendant. The suit is filed for specific performance of the agreement of sale dated 19.09.1982 alleged to have been executed by the 2nd respondent-M. Ramaprasad Reddy in favour of the 1st respondent. The suit is at the stage of arguments and at that stage, this I.A.No.737 of 2016, was filed praying the Court below to send certain documents for expert's opinion. The reasons stated in the application is that the defendant who was examined as D.W.1 in his cross-examination had denied about the execution of the agreement of sale. D.W.1 has denied even the execution of the Vakalat and with respect to various other documents. It is the assertion of the petitioners that it had become

necessary for the list mentioned documents to be sent for expert's opinion.

The said application is resisted by the respondent/defendant by filing counter denying any agreement having been entered into.

It is the contention of the learned counsel for the petitioners that it is only on account of the defendant denying even with respect to execution of the Vakalat and also the other documents executed and filed before the Court below like 1) Vakalat, 2) Counter filed in I.A.No.293 of 1989, 3) written statement, 4) receipt dated 22.12.1982 in respect of Rs.1,40,000/-, 5) the Chief Affidavit of the defendant filed on 16.8.2016, it had become necessary for these documents to be sent for expert's opinion.

Further, the learned counsel for the petitioners points out that the Presiding Officer of the Court below was under the impression that he was trying a money recovery suit as is evident from the observations that "if really, the plaintiffs wanted to substantiate their claim basing on documents, they have to adduce proper evidence. It is well known principle in money recovery cases based on primary notices etc., the plaintiffs have to prove their claim by adducing evidence in respect of such transactions."

On the other hand learned counsel for the respondent/defendant submits that the suit is of the year 1989 and the alleged agreement of sale is dated 19.09.1982 and the matter is listed for argument and at that stage, the present I.A.No.737 of 2016, was filed with an intention to the protract the litigation. Learned counsel for the respondent would further submit that as a matter of fact the plaintiffs had not entered into a witness box and one husband of the 3rd plaintiff was examined as P.W.1. In other words, there was no evidence *per se* on their behalf and it is only for protracting the litigation, the present I.A was filed.

The facts are not in dispute. It may be noted that in a suit for specific performance, the most crucial aspect is the agreement of sale. In the present case on hand, the alleged agreement of sale is executed in favour of the first respondent who denied the very existence of the agreement of sale in his favour. The suit itself came to be filed initially in the name of the first respondent and other petitioners. Upon the first respondent denying the agreement of sale, he was transposed as a defendant. The documents which are required to be sent for expert's opinion are unrelated to the agreement of sale and it is not stated in the affidavit as to how they are relevant for the purpose of deciding the controversy in issue. With respect to the observation of the learned Judge with respect to money recovery cases cannot be read in isolation. The said observation is of general nature to emphasize that plaintiffs need to adduce relevant evidence. It may not be out of place to mention that the suit is of the year 1989. The impugned application was filed at the belated stage with an intention to drag on the matter. There are no merits in the revision and the civil revision petition is liable to be dismissed.

Accordingly, the civil revision petition is dismissed. No order as to costs. Miscellaneous Petitions, if any, in this writ petition shall stand closed.

CHALLA KODANDA RAM,J

Date:24.03.2017,
Gk.

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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