

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :04.05.2018

Coram: The Honourable Mr. Justice N. SESHASAYEE

**C.R.P(PD)No.1629, 1630 & 1631 of 2018
and
C.M.P.No.8802 of 2018**

1.K.Selvam
2.K.Mani

...Petitioners in all C.R.Ps

Versus

1.M.Chidambaram
2.Thoppa Goundan
3.A.Gunasekaran
4.Rajalakshmi
5.M.Gopalakrishnan
6.M.Vasanthi
7.P.Krishnan
C.R.Ps

...Respondents in all

Prayer: These Civil Revision Petitions are filed under Article 227 of the Constitution of India against the fair and decreetal order dated 16.04.2018 made in I.A.Nos.412, 413 & 414 of 2018 in O.S.No.250 of 2005 on the file of the learned District Munsif Court, Sathyamangalam.

For Petitioner : Mr.N.Manokaran

COMMON ORDER

All the three Civil Revision Petitions are taken together for final hearing. These Civil Revision Petitions are filed against separate orders of the learned District Munsif, Sathyamangalam passed in I.A.Nos.412, 413 & 414 of 2018 in O.S.No.250 of 2005 dated 16.04.2018.

2. The brief facts are : the petitioners herein are the plaintiffs in O.S.No.250 of 2005, and it was laid for specific performance of an agreement of sale. The case is midway through the trial and the plaintiffs' side evidence is completed. Before the defendants could commence the evidence on their side, the plaintiffs have come forward with three applications viz., I.A.No.412 of 2018 for re-opening plaintiffs' evidence, I.A.No.413 of 2018 for recalling P.W.1 and I.A.No.414 of 2018 for receiving four documents. The foundation of the plaintiffs' case for bringing out these applications are that:

a)The plaintiffs have alleged that they were waiting in the Sub Registry on 17.08.2005 and to prove that they had actually waited there, they have signed in two documents as attestors, which they now want to bring on record.

b) That one of the Attestors to the Sale Agreement, on which the cause of action for the suit is found was initially sought to be examined as D.W.1 by the defendant and that an unsigned copy of the affidavit of the said witness in chief examination that was served on the plaintiffs. But since there were admissions made in the said affidavit, the defendants have withheld that witness from being examined before the Court and therefore wants to bring it on evidence. This was objected too by the respondents/defendants. This is also required to be introduced in evidence.

(c) And to introduce these documents in evidence, plaintiff must be recalled.

3. In its order in I.A.Nos.412 to 414 of 2018, the learned District Munsif Judge has held:

a) That while the plaintiffs have stated that they were present in the Sub Registry on 17.08.2005, the documents which they now seek to produce before the Court bear the dates 16.08.2005 and 21.07.2005.

b) As to the admissibility of an affidavit said to have been given by a certain witness for the defendants is concerned, inasmuch as the same is not signed, and the same could not be received in evidence.

4.1. Mr.N.Manokaran, the learned counsel appearing for the petitioners would contend that the petitioners wanted to produce two documents in which they have signed, only to establish their readiness to perform their part of the contract.

4.2. However, the readiness and willingness of the plaintiffs in a suit for specific performance is not determined solely on the factum of plaintiffs' presence at an appointed hour in the concerned Sub Registry. Readiness as a fact is inferentially made by the Court on assessing varieties of evidence made available by the parties. Secondly, this must be weighed

<http://www.judis.nic.in> In the context of the defence taken by the respondents/defendants. Here

they plead in their written statement that the said sale agreement was not executed with any intent to sell the property but to secure a loan transaction. Therefore, this Court does not find the reasoning of the learned Trial Judge is entirely faulty.

4.3. As to the second aspect after examining himself to produce and prove a purported affidavit of an attesting witness in the sale agreement is concerned, admittedly the said document is not signed. Therefore, unless the witness appears in the Court to speak to the facts that is said to have been averred in the affidavit served on the plaintiff, it is difficult in law to prove its contents, that an unsigned document even if produced on behalf of the plaintiffs does not advance his case forward. Even here, this Court finds that the reasoning of the Trial Court is in order.

7. In the end, this Court does not find any substantial merit in the matter for an admission. Accordingly, these Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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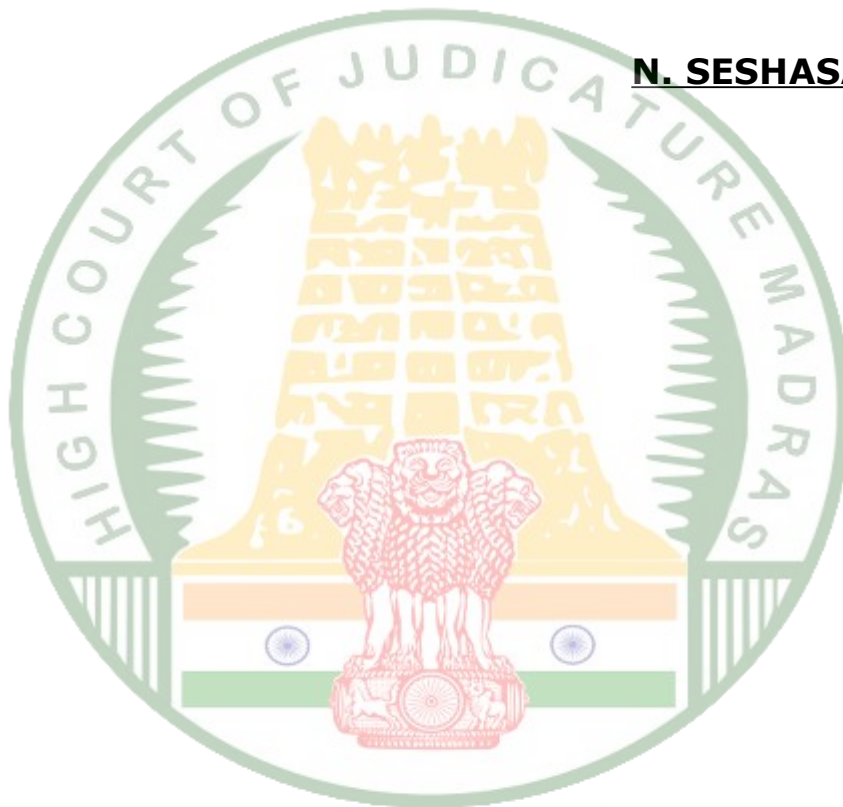
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Index : Yes / No

To

<http://www.judis.nic.in> The District Munsif Court,
Sathyamangalam.



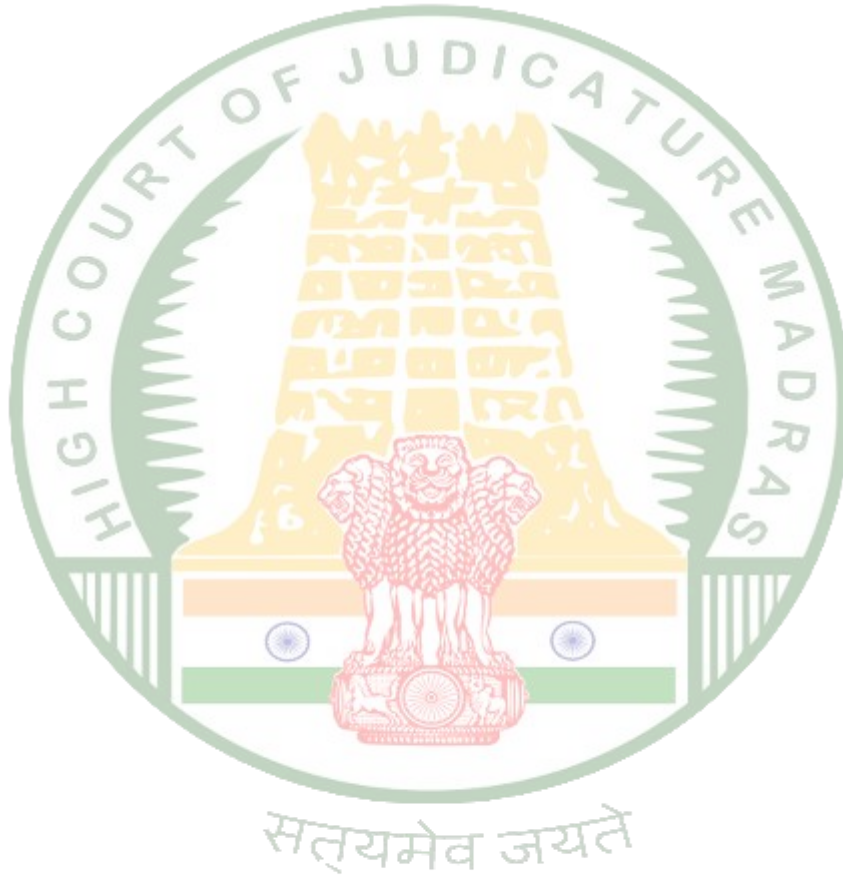
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