



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

C.R.P(PD) (MD)No.1907 of 2014

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J.Ramathilagam

... Petitioner/2nd Respondent/2nd Defendant

Vs.

1.C.Logambal

...1st respondent / Petitioner / Plaintiff

2.M.Parimala

3.P.Sivasubramanian

... Respondents 2 & 3/ Respondents 1 & 3/
Defendants 1 & 3

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 04.07.2014 passed in I.A.No.363 of 2014 in O.S.No.15 of 2012 on the file of the I Additional District Court (PCR), Tiruchirappali.

For Petitioner : Mr.G.Karnan

For Respondent No.1 : Mr.R.Sundar Srinivasan

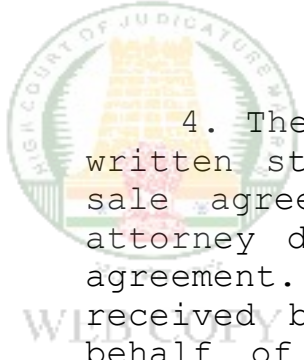
For Respondents 2 & 3 : No Appearance

ORDER

This Civil Revision Petition has been filed challenging the order dated 04.07.2014, passed in I.A.No.363 of 2014 in O.S.No.15 of 2012 on the file of the I Additional District Court (PCR), Tiruchirappali.

2. The second defendant in the suit in O.S.No.15 of 2012 on the file of the learned I Additional District Judge (PCR), Tiruchirappalli is the revision petitioner in this Civil Revision Petition. The first respondent in the Civil Revision Petition as plaintiff filed the suit in O.S.No.15 of 2012 for specific performance of an agreement of sale dated 18.03.2010 and for alternative relief for refund of a sum of Rs.30,55,883/-.

3. It is the case of the plaintiff that she entered into a registered sale agreement on 18.03.2010 and while registering the document with defendants 1 and 2 through their power agent, she paid a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) out of the total sale consideration of Rs.26,00,000/- (Rupees Twenty Six Lakhs only). It is further stated that the amount of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) had been paid by the plaintiff as part of the sale consideration and the defendants have received the same.



4. The suit was contested by the defendants 1 and 2 by filing written statement specifically denying the existence of a valid sale agreement. They denied the execution of any power of attorney deed in favour of the third defendant to execute sale agreement. It is further contended that the sale amount was not received by the defendants. After the evidence was closed on behalf of the plaintiff, the plaintiff in the suit filed an interlocutory application under Order 7 Rule 14(3) of Civil Procedure Code to grant the relief to produce certain documents in evidence, in I.A.No.363 of 2014. The details of documents show that the four documents produced along with the petition are the voucher or undertaking given by the defendants 1 and 2 in the suit. The plaintiff also filed a petition to recall P.W.1 for the purpose of marking these four documents in I.A.No.364 of 2014.

5. By way of common order, the trial Court allowed both the applications, despite serious objections raised by the defendants in the suit. The undertaking and the voucher to show payment though are not found to be part of the pleadings as observed by the Lower Court, and Order 7 Rule 14 of Civil Procedure Code enables a party to produce the documents in his possession along with the plaint, the Lower Court held that an opportunity to mark the documents should be given and permitted to mark the documents subject to proof and relevancy.

6. The learned Counsel for the Revision Petitioner mainly contended that the plaintiff has not pleaded the receipts, which are now sought to be marked as documents. The plaintiff in the suit has pleaded that she has paid a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) pursuant to the sale agreement. Hence, there is a plea with regard to the payment, merely because, how the payments were acknowledged by way of voucher or the nature of evidence i.e. available to evidence the transaction is not pleaded that cannot be a reason to deny an opportunity to the party to mark the documents.

7. The learned Counsel for the revision petitioner would further rely upon the judgment in the case of K.Mani Vs. Elumalai reported in 2002(3) CTC - 598, wherein it has been held that in the absence of specific pleadings the parties cannot be permitted to file documents or oral evidence. The conclusion of the Court in the said judgment is based on the well settled principles of law that no amount of evidence can be admitted without pleadings. That can be considered while appreciating the evidence. There has to be a pragmatic approach in dealing with these cases. In the judgment relied upon by the learned Counsel for the petitioner, the Judgment of Hon'ble Supreme Court in the case of **Mrs.Om Prabha Jain Vs. Abnash Chand and another** reported in **AIR 1968 SC 1083** was considered. Paragraph No.21 of the said judgment is more relevant. Therefore, it is extracted as follows :



"21. The Supreme Court in the case of **MRS. OM PRABHA JAIN VS. ABNASH CHAND AND ANOTHER** has held that "the ordinary rule of law is that evidence is to be given only on a plea properly raised and not in contradiction of the plea." Here, the defendant not having raised the plea of material alteration in the written statement, it is not open to develop his case during letting in evidence. In fact, viz-a-viz namely, when there is a plea and there is no evidence to support the said pleadings, the pleadings cannot also be admitted. This is a view taken by the Bombay High Court in the case of **SAKHARIBAI HASANALI MAKANI AND OTHERS V. GIRISH KUMAR RUPCHAND GADIA AND OTHERS (1997 ACJ 95)**. That case arises out of a claim in a motor accident, wherein the claimant had stated that the deceased was earning about Rs.3500/= to Rs.3600/- per month and on an average he was contributing Rs.2000/= per month for the household expenses. The witness was not cross examined and the claim was not disputed. But however, it was found that initially the claimant had claimed that the deceased was earning Rs.1500/= to Rs.1600/= per month and it was only by subsequent amendment that the claim was made that the deceased was earning Rs.3500/= or more. The Court held that "we do not find any merit in the contention that the amendment should not have been granted. The contents of the application are not the evidence and substantive evidence is only deposition of the witness entering into the witness-box. However, in a civil suit, the pleadings, namely the plaint and the written statement formed the basic structure over which the case is built by filing documents and let in oral evidence. The pleadings of the statement of facts, where the parties are expected to state all the facts and material facts and so that the other party can either accept or deny. That in the absence of pleadings, if any evidence is let in, the other party would be taken unaware of and in the said situation only, the courts have held that any amount of evidence in the absence of a plea not being raised is inadmissible". In this case also, the defendant had not chosen to plead that the suit promissory notes are materially altered, but however, he had let in evidence and the trial court accepted the case of the defendant and dismissed the suit. But however the lower appellate court took a correct view that the findings of the trial court without pleadings, is not proper and set aside the judgment and decree of the trial court. I am in complete agreement with the findings of the lower



appellate court that the dismissal of suit by the trial court is not proper. As such any amount of evidence in the absence of a plea not being raised is inadmissible."

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8. The learned Counsel for the petitioner then relied upon another judgment of Hon'ble Supreme Court in the case of **Bagai Construction through its Proprietor Lalit Bagai Vs. Gupta Building Material Store** reported in (2013) 3 MLJ - 185 (SC), wherein at paragraph No.10, it has been held as follows :

"10) In Velusamy (supra) even after considering the principles laid down in Vadiraj Naggappa Vernekar (supra) and taking note of Section 151 CPC, this Court concluded that in the interests of justice and to prevent abuse of the process of the Court, the trial Court is free to consider whether it was necessary to reopen the evidence and if so, in what manner and to what extent. Further, it is observed that the evidence should be permitted in exercise of its power under Section 151 of the Code. The following principles laid down in that case are relevant:

"19. We may add a word of caution. The power under Section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly, the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly, if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs."

With these principles, let us consider the merits of the case in hand."



9. Having regard to the facts, in this case the judgments relied upon by the learned Counsel for the petitioner have no application. It is true that interlocutory applications which are found to be to protract the proceedings, need not be entertained. Once the Court comes to the conclusion that some important documents are not produced at the relevant point of time and an explanation is offered for the non-production of documents along with the plaint, the Court can always show lenience in permitting the parties, for marking of documents at the belated stage. In this case, of course, there is some delay which is likely to cause some inconvenience to the defendants. Hence, the Lower Court ought to have allowed the petitions on terms.

10. Though the documents were not filed along with the plaint, the plaintiff cannot be denied an opportunity to mark those documents. The relevance, validity or the evidentiary value can be decided at the time of trial only. In order to avoid multiplicity of proceedings and to ensure fair opportunity to the plaintiff, this Court after considering the facts and circumstances and satisfied with the reasons stated by the plaintiff in the affidavit filed in support of the petition is not inclined to entertain this revision. There is no serious error of jurisdiction or material irregularity in the order, permitting the plaintiff to mark the documents.

11. The revision petitioner has not challenged the order of the Lower Court in the petition to recall P.W.1. Hence, this Court has no reason to interfere with the order of the Lower Court. However, the respondent/plaintiff is directed to pay a sum of Rs.5,000/- (Rupees Five Thousand only) as costs of this application to the defendants 1 and 2 and the Lower Court is permitted to mark all the documents through P.W.1, upon payment of a sum of Rs.5,000/- (Rupees Five Thousand only) by the plaintiff to the defendants 1 and 2 within a period of two weeks from the date of receipt of a copy of this order. It is also open to the revision petitioner to file additional written statement raising any objections as to the genuineness or validity of such receipts that are produced and marked by the plaintiff before the Lower Court, pursuant to the order of this Court,

12. With the above observations, the Civil Revision Petition is dismissed and the order dated 04.07.2014 passed in I.A.No.363 of 2014 in O.S.No.15 of 2012 on the file of the I Additional District Court (PCR), Tiruchirappali, is confirmed.

Sd/-

Assistant Registrar(P&A)

/True Copy/



To

The I Additional District Judge (PCR),
Tiruchirappali.

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Copy to

The Record Keeper, (2 copies)
VR Section,
Madurai Bench of Madras High court,
Madurai.

+1cc to Mr.G.Karnan, Advocate Sr.No.69281

+1cc to Mr.R.Sundar Srinivasan ,Advocate Sr.No.69314

rm

VB/PN/SAR4/10.07.2018/6P/6C

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21.06.2018