



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.04.2018
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THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) No.2461 of 2015
and
M.P. (MD) No.1 of 2015

A.Mohammed Ali

... Petitioner

vs.

M.S.Haji Mohammed

... Respondent

PRAYER:Revision Petition filed under Article 227 of Constitution of India against the order dated 31.03.2015 made in I.A.No.31 of 2015 in O.S.No.53 of 2012 on the file of the learned Principal District Judge, Thanjavur.

For Petitioner : Mr.B.Jameel Arasu
For Respondents : Mr.K.K.Ramakrishnan

O R D E R

This Civil Revision Petition has been filed against the order dated 31.03.2015 passed in I.A.No.31 of 2015 in O.S.No.53 of 2012 on the file of the Principal District Court, Thanjavur, dismissing the petition filed by the petitioner under Order 13, Rule 3 of C.P.C. The petitioner herein is the defendant in the suit.

2. The respondent/plaintiff has filed the suit for specific performance of agreement dated 07.02.2010 and for permanent injunction restraining the petitioner from alienating or encumbering the plaint "A" schedule properties and also directing the petitioner to pay a sum of Rs.13,26,794.50 with interest as an alternative relief.

3. The trial had commenced and the respondent was examined as P.W.1 and Exs.A1 to A5 were marked. Pending trial, the petitioner filed I.A.No.31 of 2015 seeking to reject Ex.A1-agreement as the same has not been duly stamped and registered.

<https://hcservices.ecourts.gov.in/hcservices/>

4. Upon consideration of the rival submissions, the trial



Court dismissed I.A.No.31 of 2015. Aggrieved by the same, the petitioner has filed this Civil Revision Petition.

5. I heard Mr.B.Jameel Arasu, learned counsel for the petitioner and Mr.K.K.Ramakrishnan, learned counsel for the respondent and also perused the materials available on record.

6. The learned counsel for the petitioner submitted that in the absence of the petitioner's counsel, the trial Court allowed the respondent in marking the documents and the action of the trial Court in marking Exs.A1 to A5 in the absence of the petitioner or his counsel is illegal, and hence no reliance can be placed on the said documents. He further submitted that the chief examination on the side of the respondent was completed and at the time of chief examination, the petitioner could notice that a forged document viz., Ex.A1-sale agreement was filed in Court by the respondent. The same cannot be marked since the said document was not original and was concocted, forged and the same cannot be taken into consideration. He would submit that by playing fraud, the respondent has marked Ex.A1-sale agreement as exhibit and the same is liable to be rejected from the file.

7. Per contra, the learned counsel for the respondent submitted that having found the admissibility of Ex.A1-sale agreement, the trial Court marked the said document and the petitioner has no right to question the same. The plea that in the absence of the petitioner or his counsel, the sale agreement has been marked as Ex.A1 is totally incorrect and the trial Court has rightly dismissed the petition filed by the petitioner and there is no need to interfere with the same.

8. On a perusal of the order impugned, it is seen that while dismissing I.A.No.31 of 2015, the trial Court observed that merely marking Ex.A1 as exhibit, it cannot be said that Ex.A1 was admitted in evidence and the same has to be proved by way of the oral evidence during trial.

9. It is apposite to note that merely marking Ex.A1-sale agreement in evidence, cannot be a ground that the same was admitted in evidence. It is seen that while marking Ex.A1-sale agreement, the petitioner has not made any objection. On the contrary, the learned counsel for the petitioner submits that in their absence, the trial Court had marked Ex.A1, sale agreement and other documents while examining the respondent in chief.

10. It is the bounden duty of the petitioner or his counsel to be present at the time of trial. The trial Court, in its order, has not stated anything that documents were marked in the absence of petitioner or his counsel. While so, it cannot be said that in the absence of petitioner or his counsel, documents were marked, particularly Ex.A1-sale agreement.



11. It is the say of the petitioner that Ex.A1-sale agreement is a forged one and the petitioner never executed any agreement in favour of the respondent. It is also the say of the petitioner that the alleged Ex.A1-sale agreement is unstamped and unregistered one and the same cannot be taken into consideration in the suit. It is not for this Court to consider whether Ex.A1-sale agreement was a forged one and fabricated. It is for the trial Court to consider the said aspect upon completion of the trial after examination of witnesses on both sides.

12. The ground on which the petitioner seeks rejection of Ex.A1-sale agreement is that there was a part performance alleged by the plaintiff and under such circumstances, Ex.A1 having not been registered, the same cannot be marked as evidence. There is no force in the submission of the petitioner, in view of the fact that the said submission is against the statutory provision, viz., proviso to Section 49 of the Registration Act, 1908, which reads as follows:

*"Section 49: Effect of non-registration of documents required to be registered--No document required by section 17 or by any **provision of the Transfer of Property Act, 1882 (IV of 1882)**, to be registered shall--*

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

*Provided that an unregistered document affecting immovable property and required by this **Act or the Transfer of Property Act, 1882 (IV of 1882)**, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter-II of the Specific Relief Act, 1877 (I of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument."*

13. In view of the specific proviso to Section 49 of the Registration Act, 1980, allowing the unregistered document affecting immovable property to be received as evidence of a contract in a suit for specific performance, the contention raised by the learned counsel for the petitioner cannot be sustained.

14. The trial Court, in its order, observed that merely marking of Ex.A1-sale agreement, cannot be said that the same was accepted and Ex.A1-sale agreement has to be proved by way of evidence during trial. The aforesaid observation would clearly indicate that it is the duty of the respondent to prove by way of



preponderance of evidence that Ex.A1-sale agreement was valid one and had been executed between the parties. Since Ex.A1-sale agreement is the basis for the suit, heavy duty cast upon the respondent to prove the same. The petitioner has every right to cross-examine the respondent qua Ex.A1-sale agreement. The trial Court to decide the merits of Ex.A1-sale agreement along with the other issues. Since the trial Court had not yet commented upon the merits of Ex.A1-sale agreement, this Court finds that there is no illegality or perversity in the order impugned and the Civil Revision Petition is liable to dismissed.

15. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed. The trial Court is directed to expedite the trial of the suit as early as possible.

Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar(CS-II)

To

The Principal District Judge,
Thanjavur.

+1cc to Mr.K.K.Ramakrishnan, Advocate SR.No.76927
Vsv
MK/RSK/SAR 2/10.09.2018/4P/3C

order made in
C.R.P. (MD) (PD) No.2461 of 2015
and
M.P. (MD) No.1 of 2015
02.08.2018