

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.04.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.No.3606 of 2018
and
C.M.P.No.20156 of 2018

P.S.Peethambaram Mudaliar ... Petitioner

-vs-

1.K.G.Khadar Basha
2.M.Suresh Babu ... Respondents

PRAYER:

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Fair and Decreetal Order of the learned Principal District Judge, Vellore dated 06.03.2018 in I.A.No.218 of 2017 in O.S.No.73 of 2015.

For Petitioner : Mr.T.M.Hariharan

For Respondents: Mr.D.J.Venkatesan for R1

Not ready in notice - R2

ORDER

The above Civil Revision petition is filed challenging the order passed by the Principal District Judge, Vellore in I.A.No.218 of 2017 in O.S.No.73 of 2015, by which the learned Judge had permitted the revision petitioner to mark the xerox copy of the agreement dated 14.06.2012 as a secondary evidence and dismissed the applications with reference to the documents described as documents 11 and 12 in the plaint as secondary evidence.

2.The brief facts of the case are as follows:

(i)The respondent herein filed a Suit in O.S.No.73 of 2015 for recovery of sum of Rs.7,50,000/- due towards refund of advance amount under the agreement of sale dated 14.06.2012 from defendants 1 and 2.

(ii)The factum of the agreement of sale has been admitted by the first defendant, who is the revision petitioner herein, in his written statement dated 16.09.2015. He has also admitted the sale consideration fixed for the agreement of sale.

(iii)In 2017, when the matter was posted for evidence, the first respondent has come forward with the petition, which is the subject matter of this Revision Petition, to permit him to mark the xerox copy of the sale consideration dated 14.06.2012 as a secondary evidence and to mark the certified registration copies of the Sale deeds executed by the first respondent in favour of third parties, which have been described as documents 11 and 12 in the plaint.

(iv)In the affidavit filed in support of the said petition, the first respondent would submit that the original agreement of sale, which is the copy given to the purchasers is in possession of the second respondent and despite his notice, the second respondent has not cared to give a copy of the same and therefore, considering the fact that the Suit is for recovery of money, which has been paid in advance, the document is required by the first respondent.

(v)The said application was objected by the first defendant inter alia once again admitting that in the agreement of sale, time was essence of the contract and also stating that the plaintiffs were never ready to perform their part of the contract by paying the entire sale consideration. Further, the counter does not dwell on the issue of filing of the xerox copy of the agreement of sale.

(vi)The Principal District Judge, Vellore, by her order dated 06.03.2018 was pleased to allow the said application on the ground that the agreement of sale is admitted by the revision petitioner/first defendant. Therefore, no prejudice is going to be caused to the revision petitioner. Challenging the same, the first defendant is before this Court.

3.Heard, the counsel on either side.

4.As rightly pointed out by the learned Judge, the execution of the Agreement of Sale, consideration etc., have not been denied by the revision petitioner. The Revision Petitioner only seeks to object the petition on ground that the defendant has not proved that he has taken steps to get the original agreement of sale. It is to be borne in mind that the revision petitioner, who is the first defendant is also possessed with a copy of the said agreement of sale and he could have produced the same. however, he has also not chosen to produce the same before the

Court. Therefore, the plaintiff is left with no other remedy except to file the xerox copy of the agreement to prove the payment of advance sale consideration.

5.The first defendant, not having disputed the factum of the agreement of sale, I do not find any infirmity in the order passed by the learned Principal District Judge, Vellore in I.A.No.218 of 2017 in O.S.No.73 of 2015.

6.In the result, the Civil Revision Petition is dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

tsg

To

The Principal District Judge,
Vellore.

+1cc to Mr.D.J.Venkatesan, Advocate Sr.39356
+1cc to Mr.T.M.Hariharan, Advocate Sr.40506

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