



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 31.07.2018
DELIVERED ON : 02.01.2019
CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P.(MD)No.746 of 2018

and

CMP(MD)No.3288 of 2018

S.Muniyandi

... Petitioner

vs

Mumtaj (Died)

Mydeen Pitchaikani

... Respondent

Revision filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 01.03.2018 passed in I.A.No.294 of 2017 in O.S.No.306 of 2009 on the file of the 1st Additional Sub Court, Madurai, has to be set aside.

For Petitioner : Mr.S.Alagarsamy

For Respondent : Mr.R.Aravindan

ORDER

The case of the Civil Revision Petitioner is that the petitioner filed a suit for specific performance in O.S.No.306 of 2009 on the file of the learned 1st Additional Sub Court, Madurai based on the sale agreement executed by one Vellaiya Rowther on 25.10.2001 who is the father of the present respondent Mydeen Pitchaikani. As per the sale agreement entire sale consideration of Rs.1,90,000/- had been received by the Vellaiya Rowther on 25.10.2001 and 29.11.2001 as Rs.1,65,000/- and Rs.25,000/- respectively. Because of the demise of Vallaiya Rowther's son, the sale deed could not be executed and further the Vellaiya Rowther also died.

2.Then this Revision petitioner filed a suit as against the legal heirs of the deceased wife and his son namely Mumtaj and Asin. Since Asin is not original name. Hence amended petition was filed to amend the name as Maideen Pitchai Kani instead of Asin. That petition was allowed. While that be so, the wife and son accepted to execute the sale deed in presence of Village elders. Because demise of her husband and her son and because of religious faith, she could not come out of her house. Since they protract the execution of the sale deed, the petitioner approached and it ends in vain because of brother-in-law Ahamed who demanded more money. Because of demise of Vellaiya Rowther and his son, the sale deed could not be executed. Then amendment petition filed and it was allowed in I.A.No.663 of 2010 on 10.01.2011.

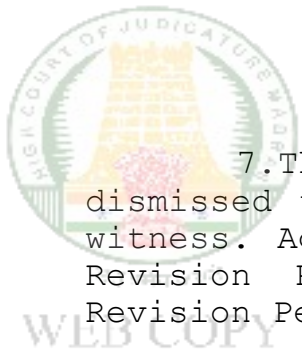


3. Since, the amendment petition could not be filed with in time and the petitioner filed condone the delay is filing to amend the plaint and carry out the amendment has been filed and the same was dismissed to restore the suit with condone delay petition was filed and the same was dismissed by the learned 1st Additional Subordinate Judge, Madurai in I.A.No.294 of 2017 in O.S.No.306 of 2009.

4. Disgruntled with the finding of the learned 1st Additional Subordinate Judge, Madurai in I.A.No.294 of 2017 in O.S.No.306 of 2009, Civil Revision Petition had been filed and the same was allowed on 26.10.2015 and directed the trial Court to dispose of it as expeditiously preferably within five months from the date of receipt of a copy of the order. Order of the CRP(MD)No.1731 of 2015 had been placed before the trial Court in the month of November 2015 and the same is pending for about 29 months without consider this Court's order.

5. Even in the written statement and during the Chief examination of the defendant totally denied the execution of the sale agreement dated 25.10.2001 and the sale agreement had not been supported by the sale consideration. In order to substantiate the claim of the revision petitioner, a portion of the 161(3) of Cr.P.C. statement given before the Deputy Superintendent of Police, Samayanallur has been recorded during the cross examination and marked the statement of the respondent as Exhibit A6. Then only, the petitioner came to know a portion of the statement had been deleted and Exhibit A6 was also removed and returned. For the ends of justice, the document has to be marked. Since the Exhibit A6 has removed. The petitioner filed a petition before the trial Court to re-open and re-call the witness on the side of the petitioner to mark the above said Exhibit A6 and the same was dismissed on 01.03.2018. Aggrieved the same, the petitioner above named begs to prefer this Memorandum of Grounds of Civil Revision Petition against the order dated 01.03.2018 passed in I.A.No.294 of 2017 in O.S.No.306 of 2009 on the file of the learned 1st Additional Sub Court, Madurai has to be set aside the order dated 01.03.2018.

6. Per contra, the respondent filed detailed counter contending that the reasons assigned in the affidavit have no relevance to the main prayer in the suit and the pleadings, evidence adduced on his side. Therefore, the petition for recalling the witness is nothing but to protract the proceedings. Once there is no need to recall the witness already examined, the petitioner cannot be allowed to file a petition to recall a witness without any legal requirement. Further it is needless to say that once there is no need to recall any of the witnesses examined on the side of the plaintiff. There is no requirement to re-open the main case. Therefore, the present petition is not legally sustainable and the same has to be dismissed with exemplary cost. Hence, may be pleased to dismiss the petition with cost.



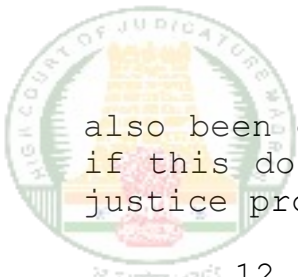
7.The trial Court on appreciation available on records dismissed the petition to re-open and re-call the plaintiff's side witness. Aggrieved the said order is under challenge in this Civil Revision Petition, the petitioner herein is filed this Civil Revision Petition.

8.I heard Mr.S.Alagarsamy, learned counsel for the petitioner and Mr.R.Aravindan, learned counsel for the respondent and perused the entire materials available on record.

9.The learned counsel for the revision petitioner submit that even in the written statement and during the chief examination of the defendant totally denied the execution of the sale agreement dated 25.10.2001 and the sale agreement had not been supported by the sale consideration. In order to substantiate the claim of the revision petitioner, a portion of the 161(3) of Cr.P.C. Statement given before the Deputy Superintendent of Police, Samayanallur has been recorded, during the cross examination and marked the statement of the respondent as Ex.A6. Then only, the petitioner came to know a portion of the statement had been deleted and Ex.A6 was also removed and returned. For the ends of justice the document has to be marked. Since the Ex.A6 has removed. The petitioner filed a petition before the trial Court to re-open and re-call the witness on the side of the petitioner to mark the above said Ex.A6 and the same was dismissed on 01.03.2018. Aggrieved the same, the petitioner above named begs to prefer this civil revision petition against the order dated 01.03.2018 passed in I.A.No.294 of 2017 in O.S.No.306 of 2009 on the file of the learned 1st Additional Sub Court, Madurai has to be set aside.

10.Further the learned counsel for the revision petitioner submitted that the Court below has failed to consider that both the parties would not be get justice of finality because of sale agreement and the executor died. The Court below failed to consider that in order to substantial justice between the parties in marking the document of Ex.A6 which has been categorically admitted before the trial Court in the cross examination. The document has to be marked which had been admitted by the respondent in the cross examination and it had been marked as Ex.A6. The document marked as Ex.A6 by the trial Court and it was returned and removed the certain portion of the testimony of the respondent which was adduced the statement before the trial Court during the cross examination.

11.Further the learned counsel for the revision petitioner submitted that the Court below failed to consider that to enable the Court to decide the real facts in contrary to the written statement filed by the respondent, the document Ex.A6 which already been marked by the trial Court as Ex.A6 ought to be marked as one of the document on the side of the petitioner. The Court below failed to consider that the testimony of the respondent in the cross examination has also been deleted by the marked document as Ex.A6



also been deleted by the marked document as Ex.A6 also been deleted if this document is not all marked the trial Court could not render justice properly in the suit for specific performance.

12.The learned counsel for the respondent only contention that the petition filed revision petitioner is only to drag on the proceedings. The reason assigned by the petitioner is untenable.

13.After the elaborate argument, this Court found that the Court below has failed to consider that for effective adjudication the Court has to find the pleadings as well as the documentary evidence. Once the respondent totally denied the execution of the sale agreement and sale consideration this Ex.A6 and the testimony of the respondent is supported the revision petitioner case.

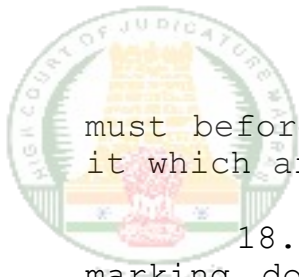
14.The trial Court has clearly erred in not considering the deposition given before the authority what are the statements denied before the Court was clearly admitted and reduced in writing before the Police authority which is totally supported in this suit for specific performance. It is well settled principle of law that the admission made by the parties is the best form of evidence unless it is proved by the others.

15.This Court learnt from the deposition of the respondent adduced before the Court is clearly revealed the entire performance in support of the sale agreement and sale consideration. At this juncture, the Court below ought to consider the document marked by the revision petitioner through the respondent who admitted the entire facts of the statements given before the authority concern. In marking the above said documents Ex.A6 is no way prejudice to the respondent that is why the respondent himself admitted the document and the Court has also marked as Ex.A6. The trial Court only rejected and removed from the testimony of the respondent.

16.In support of the claim of the revision petitioner relied upon the decision of the Hon'ble Apex Court in Ahmedsaheb (D) by L.Rs. v. Sayed Ismail in 2012 4 LW 331.

"In para-10... We are unable to appreciate as to how the appellants could have been non-suited solely on the ground that Ex.69 was not admissible in evidence. It is needless to emphasize that admission in evidence. It is needless to emphasize that admission of a party in the proceedings either in the pleadings or oral is the best evidence and the same does not need any further corroboration."

17.Further the revision petitioner cited another Judgment of the Hon'ble Apex Court in 1999 CRI.L.J. 3941 that in para-4A witness may be cross examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but if it is intended to contradict him by the writing his attention



must before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

18. The trial Court committed grave error in rejecting the marking document of Ex.A6 by the revision petitioner through the respondent.

19. As stated supra, this Court feels that the order of the 1st Additional Sub Judge, Madurai is to be set aside.

20. In the result:

(a) this Civil Revision Petition is allowed by setting aside the order of the trial Court.

(b) the trial Court is hereby directed to allow the petition in I.A.No.294 of 2017 in O.S.No.306 of 2009 to re-open and re-call the revision petitioner/ plaintiff evidence.

(c) the trial Court to allow the revision petitioner to adduce the evidence of the plaintiff from the marking of the document of Ex.A6 either through the authority concern or by the continuation of the cross examination of the respondent/defendant.

(d) Registry is directed to hand over the Ex.A6 which the document rejected in the trial Court in I.A.No.294 of 2017 in O.S.No.306 of 2009 to the revision petitioner.

Consequently, connected miscellaneous petition is closed. No costs.

sd/

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

The 1st Additional Sub Judge,
Madurai.

order made in
C.R.P. (MD) No.746 of 2018
and
CMP (MD) No.3288 of 2018
02.01.2019

VSV

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