



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.12.2019

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THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD)No.2131 of 2019

and

C.M.P. (MD)No.11179 of 2019

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.. Petitioner/Respondent/Defendant

Vs.

Hajee Moosa Omar

.. Respondent /Plaintiff/Plaintiff

Prayer: This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the order dated 16.09.2019 passed by the learned VI Additional District Judge, Madurai in I.A.No.687 of 2019 in O.S.No.121 of 2018 as illegal and consequently to direct the plaintiff in O.S.No.121 of 2018 to begin the trial as per Order XVIII Rule 1 of CPC, 1908.

For Petitioner

: Mr.K.Govindan

For Respondent

: Mr.Ajmal Khan, Senior Counsel

For Mr.Mohamed Ibrahim Saib

ORDER

Heard learned counsel appearing on either side.

2.This Civil Revision Petition has been filed against the order passed in I.A.No.687 of 2019 in O.S.No.121 of 2018 dated 16.09.2019 on the file of the learned VI Additional District Judge, Madurai. The parties are referred in the same litigative status as in the trial Court.

3.The petitioner herein is the defendant and the respondent herein is the plaintiff in the suit. The respondent herein has filed a suit in O.S.No.121 of 2018 for a prayer of specific performance. In the suit, the respondent herein has filed a petition in I.A.No.697 of 2019 to reserve his right to lead rebuttal evidence, after the defendant has produced all her evidence in the case. The petition was allowed by the trial Court. Against which, the revision petitioner preferred this revision petition.

4.The brief substance of the petition in I.A.No.687 of 2019 are as follows:

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



The suit was filed for specific performance of a contract and the defendant has admitted his signature in the disputed documents and therefore, the burden lies on her to disprove the document and the defendant must be directed to adduce evidence first.

5.The substance of the counter in I.A.No.687 of 2019 is as follows:

The defendant did not admit the execution of the document and she has signed only in blank stamp papers and therefore, the burden is upon the plaintiff and the plaintiff has to adduce evidence first.

6.After hearing both sides, the trial Court allowed the application and the revision petitioner herein contested the same on the following grounds:

The trial Court failed to consider the fact that since the plaintiff came forward with the suit for specific performance, the duty is upon him to discharge his onus first as per Order XVIII Rule 1 of CPC. The trial Court failed to appreciate the fact that the defendant never admitted the execution of the document as pleaded by the plaintiff. The defendant in paragraph no.5 of the written statement, has stated that the defendant's husband S.Balakrishnan appears to have certain financial transactions with the plaintiff and at that time, the defendant obtained some undated unfilled blank sheets and stamp papers duly signed by his wife and with the help of those papers, the agreement must have been created. In the plaint, it is stated that the plaintiff is having all the documents with him and since all the documents are alleged to have been in the custody of the plaintiff, it is the duty of the plaintiff to let in evidence. The defendant by way of counter claim has sought for a mandatory injunction, directing the plaintiff to submit the statement of accounts with regard to the transaction between the plaintiff and the defendant's husband and for mandatory injunction for the delivery of the undated, unfilled blank non-judicial stamp papers and the signed plain sheets. When the defendant put her signature on a blank paper, the burden is upon the plaintiff to prove the contents of the document.

7.On the side of the respondent, it is stated that this revision is not maintainable under Article 227 of the Constitution of India. After the amendment Act, 2002, when an appeal lies before the High Court or any other Court, the Provision under Article 227 of the Constitution of India is not maintainable. There is no apparent error or violation of law and the only allegation raised by the defendant is "financial transaction". Order XVIII Rule 3 of CPC permit the plaintiff to lead rebuttal evidence. The trial Court has clearly observed that admission of the signature amounts to admission of the contents of the document and the defendant has to commence the evidence first. The merit and de-merit of the petition



available, the lower Court can chose one of the view and that interference under Article 227 of the Constitution of India is impossible.

8.On the side of the petitioner, it is stated that execution of the document was not at all admitted by the defendant and that only the signature was admitted. The Order XVIII Rule 3 of CPC is not applicable and if any irregularity is committed, the High Court can interfere and rectify the irregularity committed by the lower Court. To substantiate this claim, the learned counsel for the revision petitioner would rely upon the judgment passed by the Telangana and Andhra Pradesh High Court in the case of **K.Arjuna Rao v. Katuru Yeukondalu**, in **Civil Revision Petition No.3262 of 2013**, which are reads as follows:

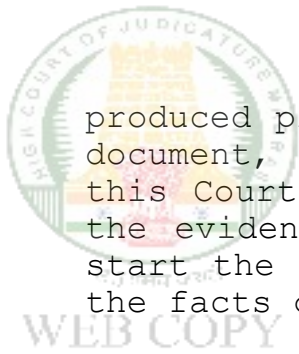
"Having regard to the facts and circumstances of the case and also principle enunciated in the cases cited supra, the Memo filed by the plaintiffs is not sustainable either on facts or in law. While exercising the jurisdiction under Article 227 of the Constitution of India, this court can interfere with the order passed by the trial court when there is illegality or irregularity apparent on the face of the record. If the order of the trial Court is allowed to stand, certainly it would amount to miscarriage of justice. Hence, it is liable to be set aside."

9.On the side of the respondent, it is stated that the burden is upon the defendant to prove that the agreement is pertaining to a loan transaction. The learned counsel for the respondent would rely upon the judgment passed by this Court in the case of **M.Subramaniam v. T.Abaranji Ammal** reported in **2018(3)MWN (Civil) 162**, which reads as follows:

"In the instant case, execution of the agreement to sell is not disputed. The consistent case of the appellant/defendant is that it was only a loan transaction. However, there is no evidence to substantiate his case."

10.In the above cited judgment, it is stated that the execution of the agreement to sell is not disputed and the defendant's claim is that the execution is only formal and it is executed as a security for loan transaction. However, in the present case, the defendant is denying the execution of the document itself. Hence, this judgment is not applicable to the present case.

11.The learned counsel for the respondent relied upon the judgment passed by this Court in the case of **TVS Motor Company limited v. Bajaj Auto Limited**, reported in **2012 (1) MWN (Civil) 53**, wherein it is held that the plaintiff is permitted to reserve his right to give rebuttal evidence. It is stated that the plaintiff has



produced proof affidavit for the chief examination and affidavit of document, which shows that he has produced the entire case before this Court. The plaintiff's claim in that case is a right to rebut the evidence of the defendant and not prayed for the defendant to start the evidence first. Hence, this judgment is not applicable to the facts of the present case.

12.The learned counsel for the respondent also relied upon the judgment passed by the Hon'ble Supreme Court in the case of ***Surya Dev Rai v. Ram Chander Rai and others*** reported in **(2003) 6 Supreme Court Cases 675**, which reads as follow:

"The High Court in exercise of Certiorari or supervisory jurisdiction will not convert itself into a Court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

At the end, we may sum up by saying that the power is there but the existence is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the judge."

13.The relief under specific performance is a discretionary relief and the burden is upon the plaintiff to prove the case. It is true that the defendant admitted the signature in the document but the defendant denied the execution of the sale agreement. In the plaint, it is stated that pursuant to the agreement, the suit properties were handed over to the plaintiff. In order to appreciate the evidence in the proper perspective, it is for the plaintiff to commence the evidence first as per Order XVIII Rule 3 of the CPC. At the same time, the trial Court is at liberty to permit the plaintiff to recall any witness, if it is necessary.

14.With the above observation, this revision petition is disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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/ /2020

Sub Assistant Registrar(CS)

Mrn



To
The VI Additional District Judge, Madurai.

+1 CC to M/s.K.GOVINDAN, Advocate (SR-104714[F] dated 12/12/2019)

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