



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.03.2019

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THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P (PD) (MD) No.1293 of 2013

and

M.P. (MD) No.1 of 2013

1.G.Loganathan

2.L.Amutha

: Petitioners/Defendants/Petitioners

.. Vs ..

A.Selvaraj

: Respondent/Plaintiff/Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order dated 18.06.2013 passed in I.A.No.214 of 2013 in O.S.No.377 of 2010 on the file of the Principal Subordinate Judge, Dindigul.

For Petitioners : Mr.S.Natesh Raja

For Respondent : Mr.M.Saravanan

ORDER

This Civil Revision Petition is directed against the order passed by the learned Principal Sub Judge, Dindigul, in I.A.No.214 of 2013 in O.S.No.377 of 2010.

2.The revision petitioners are the defendants in the suit in O.S.No.377 of 2010 on the file of the Principal Sub Judge, Dindigul. The suit was filed by the respondent for specific performance of agreement of sale. In the written statement filed by the defendants, the defendants have denied the execution of the sale agreement. In the written statement, it was also mentioned that a criminal complaint regarding fabrication of document has been lodged. The first defendant was examined as D.W.1. After the evidence of D.W.1, the defendants filed an application in I.A.No.69 of 2013 to recall D.W.1 for marking some documents. During the course of the application, the defendants allowed that application to be dismissed as not pressed. Thereafter, a subsequent application was filed by the defendants in I.A.No.214



of 2013 to grant leave to file the documents. The said application was rejected by the lower Court by recording the fact that the earlier application filed by the revision petitioners to recall DW1 for marking the documents was dismissed as not pressed and that the second application is unnecessary and filed with an objective to protract the proceedings.

3.The learned Counsel appearing for the petitioners submitted that the petitioners had earlier filed an application for marking the documents through D.W.1. The document which is sought to be marked is a copy of the FIR which was registered at the instance of the wife, namely, the second defendant in the suit. Since the author of the complaint is only the second defendant, the revision petitioners wanted to mark the documents through the wife who is proposed to be examined as D.W.2. It is in the said circumstances, the learned counsel appearing for the petitioners submitted that the previous application was allowed to be dismissed as not pressed only to enable the the document to be marked through the wife. It was therefore submitted by the learned Counsel for the petitioners that the order of the lower Court is erroneous.

4.Keeping it in mind the explanation now offered by the learned Counsel appearing for the petitioners, the case of the petitioners appears to be probable. In this case, what was sought to be marked as additional document as evidence is only a copy of the FIR. In the written statement, there is a reference to criminal complaint. Hence, it is not as if the respondent is taken by surprise by a document which was never pleaded by the revision petitioners. Specific performance being an equitable relief, the conduct of the plaintiff plays vital role. Hence, it is always in the interest of justice to permit the defendants to mark the document to substantiate their case. In that view of the matter, this Court is of the view that the order of the lower Court is not sustainable and the revision petition is liable to be allowed. As a result, this Civil Revision Petition is allowed and the order passed in I.A.No.214 of 2013 in O.S.No.377 of 2010 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

5.It is made clear that the revision petitioners are permitted to mark the document namely FIR through the wife who may be examined as D.W.2. The genuineness, proof, admissibility and relevance of the document will be subject to the objections if any that may be raised by the respondent/plaintiff. Since the evidence of plaintiff is over, the defendants' side evidence also need not be dragged.

<https://hcservices.court.gov.in/hcservices/> regard to the fact that the suit is of the year 2010, this Court direct the learned Principal Sub Judge, Dindigul, to expedite the trial and dispose of the suit within a period of six



3

months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar (CS)

To

The Principal Sub Judge,
Dindigul.

+1 CC to M/s.S.NATESH RAJA, Advocate (SR-54721[F] dated
18/03/2019)

SRM

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