



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28..01..2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Revision Petition No.261 of 2020

1.K.Senthilkumar
2.K.Kani
3.Ashokan

... Petitioners/Petitioner/Defendants

-Versus-

P.Viswanathan

... Respondent/Respondents/Plaintiff

Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 28.11.2019 made in I.A.No.1 of 2019 in O.S.No.79 of 2017 by the learned Principal Subordinate Judge, Salem.

For Petitioners : Mr.S.Vadivel Murugan

ORDER

This civil revision petition has been filed against the order of the learned Principal Subordinate Judge, Salem, dismissing the application filed the petitioners filed under Order 8 Rule 1-A and Section 151 of CPC seeking to receive the document filed along with the application by condoning the delay in producing the same.

2. The petitioners are the defendants 1 to 3 in the suit. The respondent herein filed the suit in O.S.No.79 of 2017 to set aside the sale deed dated 15.07.2015 executed by the 1st defendant in favour of the 2nd defendant. The respondent filed the above said suit alleging that he is the absolute owner of the suit schedule property; the defendants 2 and 3 have been running finance; plaintiff obtained loan of Rs.4,00,000/- from the defendants 2 and 3 and executed a deed of mortgage in respect of the suit property as a security for the loan; he executed the deed without knowing the contents of the same; he had been paying interest regularly; when he requested the defendants 2 and 3 to return the mortgage deed, they refused to hand over the same; thereafter, when he applied for encumbrance certificate, to his shock and surprise, there is an encumbrance over the property as if he had executed a registered deed of power of attorney in favour of the 1st defendant; he never intended to execute any deed power of attorney in favour of the



1st defendant; based on such fraudulent power of attorney, the defendants 1 and 3 had executed a registered sale agreement in respect of the property in question; thereafter, the deed of power of attorney was cancelled; subsequently, a sale deed came to be executed in favour of the 2nd defendant by the 1st defendant as a power agent; immediately after coming to know of the same, he filed the suit seeking to set aside the sale deed in dispute.

3. In the written statement filed in the suit by the 1st defendant which has been adopted by the defendants 2 and 3, they specifically denied the averments made in the plaint and they have inter alia contended that the plaintiff had executed a deed of power of attorney in favour of the 1st defendant and pursuant to the same, a sale deed was executed in favour of 2nd defendant for valuable consideration of Rs.7,00,000/-. But, after the commencement of trial and after the examination of P.W.1 was over, the petitioner has filed the application under revision for reception of a document which is styled as 'Receipt' with a delay.

4. According to the respondent, as per the above said document (receipt), the plaintiff had received a sum of Rs.7,00,000/- in two installments from them. The court below dismissed the application holding that absolutely there is no pleading at all to that effect and without pleading no document could be received for the purpose of proving the same in oral evidence. The trial court further held that there is no valid reason assigned for producing the document in question belatedly. Challenging the same, the defendants have come up before this court with the instant revision petition.

5. This civil revision is coming up today for admission.

6. The learned counsel for the petitioners would contend that there is sufficient pleading, containing a concise statement of the material fact relied on by the petitioners with regard to payment of a sum of Rs.7,00,000/- received by the plaintiff. Under Order VI, Rule 2 of CPC, there is no need to plead about the evidence of material fact which the parties relied on. When there is sufficient pleadings in the written statement, the trial court ought not to have dismissed the application. In so far as the delay is concerned, the petitioner had given sufficient reason for the delay and the trial court has failed to consider the same and dismissed the application which requires interference at the hands of this court.

7. I have heard the learned counsel for the petitioner and also perused the records carefully.



8. The suit is to set aside the sale deed said to have been executed by the 1st defendant in favour of the 2nd defendant. The plaintiff denied the execution of the deed of power of attorney. The plaintiff had specifically denied the allegation that he had received a sum of Rs.7,00,000/- towards sale proceeds from the power agent. In the written statement, there is only an averment that the property was sold for Rs.7,00,000/- as agreed and nothing more stated about the sale consideration passed on to the plaintiff and issuance of receipt acknowledging the payment of sale consideration. While so, after the closure of the evidence of plaintiff, the present, the document in question was sought to be received to adduce the same in evidence through the petitioner. According to him, it is the only evidence to show that the petitioner had received a sum of Rs.7,00,000/-. From A careful perusal of the receipt, it could be seen that a sum of Rs.7,00,000/- was paid to the respondent towards sale consideration in two installments . But, in the counter affidavit, the respondent has denied the receipt of amount. According to the respondent, the receipt was forged for the purpose of case. The court below after having considered the materials has come to the conclusion that absolutely there was no pleading in the written statement that the amount was paid to the plaintiff and he had issued a receipt acknowledging the payment. Without any pleading, the document cannot be received for the purpose of marking in evidence on the side of the defendants. Further, there was also a considerable delay in producing the document in question. Therefore, the court below has dismissed the application thereby refusing to receive the document in question.

9. I have gone through the entire records carefully. From a perusal of the written statement there is absolutely there is no pleading that the sale consideration was passed on to the respondent. There is a mere statement in para 8 that the property was sold for Rs.7,00,000/- and nothing more stated. In the above circumstances, the court below was absolutely right in refusing to receive the document in question for the purpose of marking in evidence on the side of the defendants as there was no statement in the pleadings of the defendants as to the payment of Rs.7,00,000/- made to the respondent and the receipt given by the respondent acknowledging the payment of sale consideration. This court does not find any infirmity in the order passed by the court below warranting interference at the hands of this court. Thus, the revision petition is devoid of merits and the same deserves only to be dismissed. However, considering the fact that the suit is pending since 2017, this court is of the view that appropriate direction could be given for early disposal of the suit.



In the result, this Civil Revision Petition is dismissed. However, considering the fact that the suit is pending since 2017, the court below is directed to dispose of the suit within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected CMP is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

kmk

To

1.The Principal Sub Judge, Salem, Salem District.

+1cc to Mr.S.Vadivel Murugan, Advocate SR.No.6013

C.R.P.No.261 of 2020

RLD(CO)
GMY(14/07/2020)