

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 06..01..2020
Orders Pronounced on : 14..02..2020
CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Revision Petition No.1816 of 2019
and
C.M.P.No.11936 of 2019

G.Amsaveni

... Petitioner

-Versus-

1.R.Kannan

2.K.Jothilakshmi

... Respondents

Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 04.02.2019 made in I.A.No.1 of 2019 in O.S.No.565 of 2013 by the learned V Additional District Judge, Coimbatore, Coimbatore District.

For Petitioner : Mr.S.Vediappan

For Respondent(s) : Mr.N.Somasundar for RR1 & 2

ORDER

This civil revision petition has been filed against the order passed by the learned V Additional District Judge, Coimbatore, allowing the application in I.A.No.1 of 2019 filed by the petitioner under Order VIII, Rule 1-A (3) of CPC seeking to condone the delay in the production of certain documents appended to the application.

2. The respondent is the plaintiff in the suit in O.S.NO.565 of 2013. She has filed the above said suit against the respondents for a decree (i) specific performance of contract of agreement of sale dated 31.10.2012 or in the alternative, directing the defendants to repay the sum of Rs.15,78,216/- together with subsequent interest for Rs.14,00,000/- @ 12% per annum from the date of plaint till date of realization; (ii) permanent injunction restraining the defendants 1 and 2 from in any way encumbering or alienating the suit property in any manner whatsoever till the dispute between the plaintiff and the defendants is settled; (ii) permanent injunction restraining the 3rd defendant from registering any document that maybe presented by the defendants 1 and 2 for alienating or encumbering the suit property.

3. The above said suit has been filed on the ground that the petitioner had entered into an agreement of sale for the purchase of house site along with a house building to be constructed. The sale consideration was fixed at Rs.27,00,000/- and the petitioner paid an advance of Rs.14,00,000/- out of the total sale consideration with a condition that the respondents should complete the construction work and handover the vacant possession of the house and execute the sale deed within a period of 15 months from the date of agreement. Since the respondents failed to perform their part of contract, the petitioner filed the above said suit for the reliefs as stated above. The said suit is contested by the respondents inter alia contending that they have approached one Selvaraj for loan, who had, in turn introduced the husband of the petitioner one Mr.Govindaraj, who has been engaged in the real estate business and from him, the 1st respondent borrowed a sum of Rs.14,00,000/- as loan. At the time of lending loan, the said Govindaraj had obtained signatures of the 1st respondent in blank promissory notes, stamp paper and in some green bond papers. Thereafter, in the month of November, 2012, the 1st respondent had repaid the entire amount in four installments. Thereafter, the 1st respondent had paid considerable amount to the petitioner for the medical expenses of the said Govindaraj. After the 1st respondent repaid the loan, the petitioner had fabricated the sale agreement using the signatures obtained from the 1st respondent on blank stamp papers and filed the suit.

4. After the commencement of trial and the examination of the witnesses on the side of petitioner was over, the 2nd respondent had filed the application under revision seeking to condone the delay in the production of certain documents. The above said application was allowed by the court below on the ground that the 2nd respondent had only sought to condone the delay in the production of the documents so as to adduce the same in evidence and the genuineness of the same could be decided at the time of trial. Challenging the above said order, the present revision has been filed by the plaintiff in the suit.

5. The learned counsel appearing for the petitioner would contend that the documents which were sought to be marked by the respondents were not at all related to the issues involved in the suit and most of them are medical records pertaining to one Divya Lakshmi, who has got nothing to do with the 2nd respondent and the affidavit filed in support to the petition under revision is also totally silent regarding the purpose for which those documents were sought to be marked.

6. That apart, according to the learned counsel, without any pleading, those documents could not be permitted to be marked in

evidence. But, the court below without considering the legal aspect allowed the application and therefore, the same requires interference at the hands of this court.

7. Per contra, the learned counsel appearing for the respondents would submit that the 2nd respondent wanted to mark the documents in question only to show that at the relevant point of time when the alleged agreement of sale said to have been executed, she was hospitalized and was taking treatment as inpatient. The documents relied upon by the 2nd respondent would clearly establish that at the relevant point of time when the 2nd respondent was hospitalized and was taking treatment as inpatient, there could have been no occasion for her to enter into an agreement of sale along with her husband.

8. The learned counsel appearing for the respondents would further contend that the respondents stoutly denied the execution of the agreement of sale which would be sufficient enough and in law, the respondents are expected to plead only the statement in concise in their written statement and it is not necessary for the respondents to plead the evidence which is to be let in during trial. That apart, the name Divya Lakshmi is an alias name of the 2nd respondent and therefore, the medical records stood in the name of Divya Lakshmi are nothing but the records pertaining to the 2nd respondent only. In support of his contentions, the learned counsel relied upon few judgements about which reference would be made at the appropriate place in this order.

9. I have considered the rival submissions carefully.

10. The suit has been filed for specific performance of contract and for other reliefs as stated earlier on the ground that the respondents had executed an agreement of sale agreeing to sell the suit site along with the house to be constructed and having received the part of sale consideration, the respondents refused to perform their part of obligations. The respondents contested the suit contending that they never entered into any agreement of sale and they had only borrowed amount from the husband of the petitioner and at that time, her husband had obtained signature from the 1st respondent in blank papers, blank stamp papers and using the same, they had created the sale agreement in question and filed the suit. After the commencement of the trial and the examination of the witnesses on the side of the petitioner was over and the case has been posted for examination of defendants' side witnesses, the 2nd defendant had file the application under revision.

11. A perusal of the affidavit filed in support of the application would go to show that there is absolutely no whisper

about the purpose for which documents were sought to be marked in evidence. He had only stated that the documents which were in their custody at the time of filing of the written statement could not be traced and hence, there was a delay.

12. The learned counsel for the respondents would contend that the documents in question are nothing but the medical records to show that at the relevant point of time when the alleged agreement of sale is stated to have been executed, she was admitted in hospital as inpatient and was taking treatment and there was no occasion for the 2nd respondent jointly along with 1st respondent to execute an agreement of sale in favour of the plaintiff. But, absolutely, there is no pleading to that effect in their written statement. The only defence taken by the respondents in their written statement was that they had borrowed loan from the petitioner's husband and at that time, the husband of the petitioner had obtained signatures in blank promissory note and blank stamp papers and using the same, the sale agreement had been created. Apart from that a perusal of the documents which were sought to be marked would show that most of them stood in the name of one Divya Lakshmi and some of them stood in the name of the 2nd respondent. Even though the learned counsel for the respondents 1 and 2 would contend that the 2nd respondent is also known as by alias name Divya Lakshmi and therefore, some of the medical records stood in the name of Divya Lakshmi and all the medical records pertain to the 2nd respondent alone, absolutely, there is no material to substantiate such contention.

13. No doubt, as rightly pointed out by the learned learned counsel for the respondents, the parties are only expected to plead material facts in concise in their plaint or written statement and they need not plead the evidence to be let in during trial. In the instant case, a perusal of the pleadings in the written statement would go to show that there is absolutely no pleading that the 2nd respondent was admitted in the hospital at the time when the alleged agreement of sale is stated to have been executed. It is also the settled law that without pleading no amount of evidence could be allowed to be let in. Therefore, the judgements relied on by the learned counsel for the petitioner reported in *Bharat Singh v. State of Haryana*, 1988(4) SCC 534; *Amal Kumar v. Bhupinder Singh*, 1976 PLJ 26; and *M.Kokila v. A.Dhanalakshmi*, 2014(4) CTC 805 would not be applicable to the facts of the case on hand.

14. Even though all the documents in question were available with the petitioner, they had not chosen to produce the same along with the written statement and only after the commencement of trial, they had come forward with the application under revision without any proper and valid reason. The court below

without considering all the aspects discussed above has mechanically allowed the application merely holding that that it was an application only to condone the delay in the production of the documents and the genuineness of the same could be permitted to be proved during trial. Thus, the order impugned in this revision is not legally sustainable and as such, the same requires interference at the hands of this court. This civil revision petition succeeds accordingly.

In the result, this civil revision petition is allowed and the order dated 04.02.2019 made in I.A.No.1 of 2019 in O.S.No.565 of 2013 by the learned V Additional District Judge, Coimbatore, Coimbatore District is set aside and the application in I.A.No.1 of 2019 is, accordingly, dismissed. Considering the fact that the suit is pending since 2013 and the trial is underway, the court below is directed to proceed with the trial and dispose of the same within a period of six months from the date receipt of a copy of this order. No costs. Consequently, connected CMP is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

The V Additional District Judge, Coimbatore, Coimbatore District.

+1cc to Mr.S.Vediappan , Advocate SR.No. 12087

C.R.P.No.1816 of 2019

A.SK(05/03/2020)

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