

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[ORDERS RESERVED ON : 06.10.2020]

[ORDERS PRONOUNCED ON : 03.11.2020]

CORAM :

THE HONOURABLE MR. JUSTICE **RMT.TEEKAA RAMAN**

C.R.P. [PD] No.1893 of 2019

and

C.M.P.No.15357 of 2019

Bhagiyalakshmi @ Palaniammal ... Petitioner / 1st Defendant

... Vs ...

1. D.Govindarajan

... 1st Respondent / Plaintiff

2. Sundarambal

... 2nd Respondent / 2nd Defendant

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order dated 15.03.2019 made in I.A.No.1 of 2019 in O.S.No.178 of 2015 on the file of the learned I Additional District Judge, Coimbatore.

For Petitioner : Mr.B.Nedunchezhiyan
For R-1 : Mr.Muthumani Duraisamy
For R-2 : Mr.S.R.Sundar

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ORDER

This Civil Revision Petition is filed by the first defendant in the suit in O.S.No.178 of 2015.

2. Brief facts of the case are as follows:-

[A] The first respondent herein/plaintiff is the agreement holder. He has filed the above said suit on the ground that there was an agreement of sale dated 23.12.2005 between himself and one Subramaniam. Since the said Subramaniam died, the plaintiff has filed the suit against the wife of Subramaniam/first defendant and mother of Subramaniam/second defendant. Initially, the first defendant has filed written statement objecting as to the coming into the existence of the suit sale agreement.

[B] On 06.03.2018 the second defendant appeared in Court and she remained ex-parte on 04.10.2018. The second defendant, mother of the deceased Subramaniam thereafter was examined as P.W.4 on behalf of the plaintiff on 20.02.2019.

[C] Pending cross-examination of P.W.4, the first defendant has filed an application in I.A.No.1 of 2019 before the trial Court for filing additional written statement alleging that there is an estoppel of the evidence of P.W.4 and hence, the evidence of P.W.4 shall not be looked into inter alia contended that she has also got pre-emptive right to purchase the property under Order 8 Rule 9 of C.P.C. The said application was dismissed by the learned I Additional District Judge, Coimbatore and hence, the present Civil Revision Petition is filed by the first defendant.

3. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents 1 and 2 and perused the records.

4. It is to be stated that P.W.4 viz., the second defendant remained ex-parte on 04.10.2018 and she was examined on behalf of the plaintiff. The truth and veracity of the evidence of P.W.4 has to be decided in the cross-examination during the time of the trial. In the proposed additional written statement, the petitioner wanted to raise a new plea viz., pre-emptive right to purchase the undivided share. The

questions as to whether the suit sale agreement is specifically enforceable; whether the plaintiff is ready and willing to perform his part of the contract; whether there is any further payment made on behalf the plaintiff and whether the evidence of P.W.4 is true and genuine have to be decided during the time of trial and the same cannot be the reason for filing additional written statement. The proposed right does not relate to the cause of action or the subject matter of the lis pending before the Court and hence, the trial Court has rightly rejected the interlocutory application filed by the first defendant in I.A.No.1 of 2019 and hence, I do not find any reason to interfere with the order passed by the learned I Additional District Judge, Coimbatore. Accordingly, this Civil Revision Petition is liable to be dismissed.

5. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is also dismissed.

03.11.2020

Internet :Yes
Jrl

To

The I Additional District Judge,
Coimbatore.



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RMT.TEEKAA RAMAN, J.

Jrl



**Order made in
C.R.P. [PD] No.1893 of 2019**

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