

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.280 of 2017

and

C.M.P.No.1243 of 2017

M.Gopalasamy

.. Petitioner

Vs.

S.Loganathan

.. Respondent

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order dated 30.11.2016 made in I.A.No.681 of 2016 in O.S.No.137 of 2013 on the file of Sub Court, Gobichettipalayam.

For Appellant : Mr.N.Manokaran

For Respondent : Ms.R.Rajashama Gayathri
for Mr.K.Kovi Ganesan

ORDER

(The matter is heard through Video Conferencing)

This Civil Civil Revision Petition is filed to set aside the fair and decreetal order dated 30.11.2016 made in I.A.No.681 of 2016 in O.S.No.137 of 2013 on the file of the Sub Court, Gobichettipalayam.

2. The petitioner is the plaintiff in O.S.No.137 of 2013 on the file of the Sub Court, Gobichettipalayam. The petitioner filed the above suit for specific performance and for possession. The respondent filed written statement and contended that the alleged sale agreement is in fact only a loan agreement and he has executed the same without knowing the contents. In the suit, Trial commenced. The petitioner filed I.A.No.681 of 2016 under Order XVI Rule 1 Section 151 of C.P.C. for examination of Sub Registrar, Thingalur as a witness on his side.

2(a) The respondent filed counter affidavit and contended that the petitioner has not given any reason for not examining the attesting witness and scribe. The petitioner has to make an endorsement that he is dispensing with examination of attestor and scribe. The Sub Registrar, Thingalur cannot

be an attesting witness. The present petition is filed only to protract the trial of the proceedings and prayed for dismissal of the I.A.

2(b) The learned Judge considering the averments made in the affidavit, counter affidavit and the arguments of the parties, dismissed the Interlocutory Application holding that the respondent is not denying the execution of sale agreement but he is denying only the intention to sell the property and by examining the Sub Registrar, Thingalur, the intention of the respondent cannot be proved and also the present Sub Registrar cannot have any personal knowledge about the registration as well as the execution of sale document.

3. Against the above said order of dismissal dated 30.11.2016 made in I.A.No.681 of 2016 in O.S.No.137 of 2013, the present Civil Revision Petition has been filed.

4. Mr.N.Manokaran, learned counsel appearing for the petitioner submitted that the petitioner has filed the suit for specific performance based on the registered sale agreement dated 19.08.2011. The respondent has not

denied the execution but he contended that it was executed only as a security for loan transaction. In view of such stand taken by the respondent, the petitioner has to prove the due execution as per the provisions of Registration Act. The learned Judge failed to see that as per Order XVI Rule 1 of C.P.C., the discretion is given to the parties to summon a person whom he desire to examine or to produce the documents. The respondent had won over the witnesses in the document and therefore it is necessary to examine the Sub Registrar, Thingalur. The learned Judge failed to note that Sub Registrar, Thingalur accepted the document for registration only after enquiring the respondent. The learned Judge failed to see that the registration of document presumes the contents of the document and therefore Sub Registrar, Thingalur who is custodian of the document is a competent witness and prayed for allowing the petition.

5. Per contra, Ms.R.Rajashama Gayathri, learned counsel representing Mr.K.Kovi Ganesan, learned counsel appearing for the respondent submitted that the respondent is not disputing the execution and registration of the document but disputing the contents of the document as he has executed the same only as a security for loan transaction. The Sub Registrar, Thingalur

cannot be a competent witness to prove the intention of the respondent. The learned Judge considered the entire materials and dismissed the application by giving valid reason and prayed for dismissal of the Civil Revision Petition.

6. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondent and perused the entire materials on record.

7. The petitioner has filed the present Suit for specific performance based on the sale agreement dated 19.08.2011 executed by the respondent. The respondent in the written statement admitted the execution and registration of the said document, but contended that he executed the document only as a security for loan transaction and not with an intention to sell the property to the petitioner. The petitioner, in such circumstances, has filed I.A.No.681 of 2016 under Order XVI Rule 1 and Section 151 of C.P.C. to examine the Sub Registrar, Thingalur. When the respondent has not denied the execution and registration of documents but denied the intention, the subsequent Sub Registrar will not be a competent witness to speak about the intention of the parties at the time of registration after a period of 5 years.

When the respondent is disputing the nature of document, it is for the petitioner to prove that the respondent had executed the document only as an Agreement of sale and not as a security document for loan transaction. The learned Judge considered entire materials and dismissed the application by giving valid reason. There is no error or perversity in the order passed by the learned Judge warranting interference by this Court. It is open to the petitioner to examine the scribe as well as the witness to prove this case, if he so desire.

8. In the result, this Civil Revision Petition is dismissed. Consequently the connected Miscellaneous Petition is closed. No costs.

07.09.2020

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Index : Yes / No
Internet : Yes / No

सत्यमेव जयते

To

The learned Subordinate Judge,
Gobichettipalayam.

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V.M.VELUMANI, J.

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