



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 05.02.2020

CORAM

WEB COPY

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (MD)No.1735 of 2019

Sadhasivam ... Petitioner/Petitioner/1st Defendant

Vs.

1.N.Selvam

2.S.Selvarani

3.Tamil Nadu Housing Board,
Thanjavur Housing Unit,
Thanjavur.

... Respondents/Respondents/
Defendants

Prayer : This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order made in I.A.No.63 of 2019 in O.S.No.274 of 2016 on the file of the Additional Subordinate Judge, Thanjavur, dated 05.04.2019 and allow the Civil Revision Petition.

For Petitioner : Mr.R.Murali

For R1 : Mr.P.Sesubalan Raja

For R2 : No Appearance

For R3 : No Appearance

ORDER

This petition has been filed to quash the order dated 05.04.2019 made in I.A.No.63 of 2019 in O.S.No.274 of 2016 on the file of the Additional Subordinate Judge, Thanjavur.

2.The petitioner herein is the first defendant, the first respondent herein is the plaintiff and the respondents 2 and 3 are the defendants in the suit.

3.The first respondent herein filed a suit in O.S.No.274 of 2016 for a prayer of specific performance. In that suit the revision petitioner filed a petition in I.A.No.63 of 2019 to produce documents. That petition was dismissed by the Trial Court. Against which, the revision petitioner preferred this revision.



4. Brief substance of the petition in I.A.No.63 of 2019 is as follows:-

The entire suit was filed with fabricated documents with an intention to grab the property of the petitioner. Even in the plaint in paragraph No.7, the first respondent made allegation that prior to the suit agreement there was another agreement of sale entered into between the petitioner and the wife of the first respondent on 21.07.2006 for a sale consideration of Rs.3,50,000/-. Apart from that, averments were made that the petitioner had received the entire sale amount and issued receipts for the same. Even prior to the filing of suit, the first respondent attempted to grab the property with the help of police. More over the first respondent gave a written complaint dated 11.03.2016 to the employer of the petitioner viz., Director of Medical and Rural Health Services. Based on the complaint, enquiry was conducted and the first respondent produced copies of three receipts issued in favour of S.Selvarani. The petitioner never executed any such receipts in favour of the said S.Selvarani. But, the documents are in the custody of first respondent and were not produced before the Court. Those documents are necessary to arrive at a proper conclusion and the petitioner prayed to issue summon to the first respondent to produce the petition mentioned documents.

5. Brief substance of the counter filed by the first respondent in I.A.No.63 of 2019 is as follows:-

The various allegations regarding the grabbing of the property and police complaint and departmental actions are unconnected to the matter in dispute and the issue involved in the suit. The first respondent's possession of certain documents, which were produced in the other proceedings is denied. It is denied that the documents referred in the petition are in the custody of the respondent. This respondent is not a party to the said document and this petition is to be dismissed.

6. After hearing both sides, the Trial Court dismissed the petition. Against which, the revision petitioner preferred this revision on the following grounds:-

Even in the written statement, the first respondent herein has referred to the documents dated 21.07.2006. Though, the documents are made between the petitioner and the second respondent, who is none other than the wife of the first respondent, those are in the custody of the respondents 1 & 2. The learned Trial Judge has dismissed the petition without giving any independent finding on the facts pleaded by the parties.

7. On the side of the petitioner, it is stated that the petitioner is the owner of the property and the suit is for specific performance was filed. In paragraph No.7 of the plaint, reference to another agreement of the year 2006 was mentioned. But the present sale agreement was after the year 2008. Prior to the filing of suit, the first respondent lodged a police complaint against the revision



petitioner and he has filed a complaint to the employer of the petitioner and a departmental enquiry was conducted and three receipts alleged to have been signed by the revision petitioner were produced. Those documents are necessary to decide the present suit. Those documents are in the custody of the first respondent. The learned Trial Judge failed to give any reasons for believing the statements of the first respondent. Though, the petitioner obtained copies of those documents through the Revenue Divisional Officer, the originals are necessary to be marked. It is stated that the employer of the petitioner obtained only attested copies from the respondent and the respondent get original documents returned to him.

8. On the side of the respondent, it is stated that the Interlocutory Application petition itself is not maintainable under Order 16 Rule 6. Since, the provision of law is not applicable to the parties in the suit and it is applicable only to summon 3rd party witnesses to produce documents. The petitioner can file only a notice under Order 12 Rule 8 to produce the documents. On the side of the respondent, it is further stated that a party to the suit cannot be compelled by other party to give evidence against himself. Only an adverse inference can be taken drawn against the respondent and the petitioner cannot compel the respondent to file any documents. It is further stated that the first respondent is not a party to the documents and the documents are not in the custody of the first respondent and the first respondent has not produced any original documents before the employer of the petitioner.

9. A judgment of Hon'ble Supreme Court dated 03.02.2015 in Civil Appeal Nos.10041-42 of 2010 is cited wherein it is decided as follows:-

" The object of Order XII Rule 8 of the Code is to facilitate the Plaintiff or any other party to get a document on record which is not in their possession or in possession of the other party. If a document has been produced then it is the duty of the party who has asked for such production to get it placed on record. If, however, the said document is not placed on record, then adverse inference against the party who has produced the same cannot be drawn, more so, when the party who has produced the said document before the Court has been cross-examined vis-a-vis that document."

10. On the side of the revision petitioner, it is stated that second respondent is the wife of the first respondent who remains ex-parte and the first respondent to produce has to be directed to produce the documents.



11.It is seen that the suit is for specific performance. The burden is upon the first respondent to prove the case. The allegation of the petitioner is that there was an averment as to the agreement of the year 2006 and there was a averment in the plaint regarding the payment of the entire consideration and issuance of receipts for the same. The alleged agreement is between the petitioner and the second respondent. The alleged receipts are only in the name of the second respondent. The first respondent is a party to the suit. The first respondent denied the possession of the documents. The provision of law cited in the petition is applicable only to the witnesses and not to the parties to the suit. The Trial Court can give only notice to the first respondent to produce the documents under Order 12 Rule 8 and the Court can only take adverse inference for non-production of the documents. The petitioner cannot be compelled by the respondent to produce evidence against his own case.

12.In the above circumstance, there is nothing sufficient enough to allow the revision. Accordingly, the order passed in I.A.No.63 of 2019 in O.S.No.274 of 2016 on the file of the Additional Subordinate Judge, Thanjavur, dated 05.04.2019, is hereby confirmed and the Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar (AS)

// True Copy //

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Sub Assistant Registrar(CS)

dss

To

1.The Additional Subordinate Judge,
Thanjavur,

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.P.SESUBALAN RAJA, Advocate (SR-5027[F] dated 06/02/2020)

C.R.P. (MD)No.1735 of 2019

Dated: 05.02.2020

PU(07/05/2020) 4P 4C