

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.2442 of 2019

ORDER:

1. This Revision is filed challenging the order dt.21.08.2019 in IA.No.132 of 2019 in O.S.No.357 of 2013 of the XIX Additional Senior Civil Judge, City Civil Court, Secunderabad, refusing to summon the husband of the respondent as a witness in the suit.

2. The said suit was filed by the petitioner against the respondent for specific performance of an oral agreement of sale said to have occurred on 04.05.2011 agreeing to sell the suit schedule property for a sum of Rs.7 lakhs to the petitioner.

3. It is also the contention of the petitioner in the plaint that a receipt was executed by the respondent on 11.10.2012, witnessed by the husband of the respondent Mr.T.Fredrick, as an acknowledgment of an amount of Rs.7 lakhs.

4. The respondent filed written statement denying that she had agreed to sell orally the suit schedule property to the petitioner or her husband witnessed any receipt issued by her acknowledging receipt of amount from the petitioner.

5. After the evidence of the respondent was over, the petitioner filed I.A.No.132 of 2019 to re-open the case for the purpose of summoning the husband of the respondent as a witness.

6. In the said application he contended that in his evidence he had deposed about execution of the said receipt by the respondent, which was witnessed by her husband, but the

respondent in her evidence had denied her husband's signature as well as her signature on the said receipt; that the respondent did not examine her husband who is regularly accompanying her for each and every adjournment of the case; that the husband of the respondent is a crucial witness; so he may be summoned as a witness for being confronted with the signature on Ex.A1 purporting to be his signature; and therefore the evidence of the petitioner may be re-opened for the said purpose.

7. Though no counter affidavit was filed by the respondent, the said application was dismissed by the Court below on 21.08.2019. It observed that there is no averment in the plaint and in the chief-examination affidavit by the petitioner that there was an oral agreement between the petitioner and the husband of the respondent and that the petitioner failed to establish that there is such oral agreement with the husband of the respondent. It also held that the petitioner did not establish his claim that the respondent was there at the time of oral agreement between the petitioner and the respondent.

8. Assailing the same, this Revision is filed.

9. Heard counsel for the revision petitioner and Sri M.S.Chandresh, counsel appearing for the respondent.

10. It was never the claim of the petitioner that there was any oral agreement between the husband of the respondent and the petitioner and therefore there would be no such averment in the

plaint or in the chief-examination affidavit filed by the petitioner. So, the absence of such a pleading is wholly irrelevant.

11. That apart, it is also not the claim of the petitioner that the husband of the respondent was present at the time of oral agreement between the petitioner and the respondent. It was only his plea that the husband of the respondent signed as a witness on the receipt/Ex.A1 executed by the respondent in his favour, but the respondent in her evidence has denied not only her signature on the said receipt but also her husband's signature and so her husband is required to be examined.

12. In my considered opinion, the evidence of the husband of the respondent is naturally critical for deciding the matter and the Court below misdirected itself without properly understanding the contention of the petitioner and dismissed the application.

13. Therefore, this Civil Revision Petition is allowed; the order dt.21.08.2019 in IA.No.132 of 2019 in O.S.No.357 of 2013 of the XIX Additional Senior Civil Judge, City Civil Court, Secunderabad, is set aside and the said IA is allowed. No order as to costs.

14. Consequently, miscellaneous petitions pending if any shall stand dismissed.

M.S. RAMACHANDRA RAO, J

10th February, 2020.

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