

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2021

Coram

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P. (PD) Nos. 1185 & 1186 of 2021

And

C.M.P. 9083 of 2021

C.R.P. (PD) No. 1185 of 2021:

Tmt. B.Pushpalatha ... Petitioner/Petitioner/Plaintiff

-Vs-

1. Tmt. R. Vijayarani

2. N.Vishnuraj

... Respondents / Respondents/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order passed in I.A.No. 3 of 2021 in O.S.No. 2719 of 2021 dated 01.03.2021 by the learned XV Assistant Judge City Civil Court, Chennai.

C.R.P. (PD) No. 1186 of 2021:

Tmt. B.Pushpalatha

... Petitioner/Petitioner/Plaintiff

-Vs-

Tmt. R. Vijayarani

... Respondent / Respondent/Defendant

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order passed in I.A.No. 4 of 2021 in O.S.No. 2719 of 2016 dated 01.03.2021 by the learned XV Assistant Judge City Civil Court, Chennai.

For Petitioner in
both C.R.Ps. : Mr. N. Rajan

For Respondents in
both C.R.Ps. : Mr. A.K. Jayaraj

COMMON ORDER

Both these Revision Petitions have been filed questioning the order dated 01.03.2021 in I.A.Nos. 3 & 4 of 2021.

2. The plaintiff is the revision petitioner herein. The plaintiff had instituted O.S.No. 2719 of 2016, which is now pending on the file of XV Assistant City Civil Court, at Chennai, against the defendant seeking specific performance of a registered agreement of sale dated 18.03.1993 and for consequential reliefs and also in the alternate to refund the sale consideration, which according to the plaintiff had been paid towards the

said agreement and also for permanent injunction restraining the defendant from in any manner alienating the property and also for costs of the suit.

3. Let me not dwelve deeply into the merits of the case or on the contentions raised by the respondent/defendant since they are still subject matters to be addressed by the learned Trial Judge.

4. At any rate, the respondent herein had filed their written statement and the issues had been framed. Parties have been invited to adduce evidence. The parties had taken up such invitation and grazed the witness box. They had let in evidence. They have been cross examined. Documents had been marked and now the matter is posted for advancing arguments. At that stage, the plaintiff came to file I.A.Nos. 3 & 4 of 2021. I.A.No. 3 of 2021 was filed under Order 1 Rule 10(2) of the Code of Civil Procedure seeking to implead N.Vishnuraj as a second defendant in the said suit and I.A.No. 4 of 2021 had been filed to reopen the suit for the purpose of impleading the said N.Vishnuraj as second defendant in the suit. Necessity to file such an application arose owing to marking of Ex.B-11 on the part of the defendants.

5. Ex.B-11 was a copy of a registered settlement deed executed by the defendant in favour of her son dated 11.11.2014, much prior to the institution of the suit. It is claimed by Mr. N. Rajan, learned counsel for the revision petitioner/plaintiff that the revision petitioner never knew about the execution of the said settlement deed. The learned counsel found fault with the conduct of the respondent/defendant in not disclosing the same in any of the pleadings before the trial Court. The learned counsel very specifically pointed out to the reply notice issued prior to institution of the suit were there is no reference to the execution of the settlement deed. The learned counsel thereafter pointed out the written statement filed in answer to the averments in the plaint and again, there was no specific reference to the settlement deed. The learned counsel also pointed out the proof affidavit filed by the defendant where again there was no reference that the property had been settled by the defendant in favour of her son by way of a registered settlement deed much prior to the institution of the suit. It is therefore claimed by Mr.N.Rajan, learned counsel for the revision petitioner/plaintiff that unfortunately, the revision petitioner was not aware of such transaction having ever taken place and the moment, she came to know about that fact

she immediately filed applications to implead the settlee N.Vishnuraj, as a party defendant and also to reopen the suit for that particular purpose.

6. It has been stated by Mr.N.Rajan that non joinder in this case will be fatal to the case of the plaintiff since the plaintiff has proceeded only against the defendant, who on the date of institution of the suit, cannot claim to be the owner or the title holder of the property having settled the same in favour of her son. It is therefore stated that the plaintiff would be put to much loss and hardship if the relief is not granted. As a matter of fact, the defendant can never execute or specifically perform the agreement which is of the year 1993 since she had already dealt with the property in the year 2014 by settling it in the name of her son. The learned counsel once again stated that there was no laches on the part of the plaintiff in filing the applications. They had no knowledge and therefore, they cannot be faulted for not filing the applications earlier and for filing the applications at the very last moment when the suit had been posted for arguments.

7. Mr.A.K. Jayaraj, learned counsel for the respondents however pointed out that the fact that the property had been settled by the defendant in favour of her son had been stated in earlier judicial proceedings, particularly in an anticipatory bail application where there is a reference in the petition itself by the respect herein that the property had been settled in favour of her son and also in the order passed by the learned Single Judge of this Court in the said application where again there is a reference that the property had been settled by the respondent herein in favour of her son. The learned counsel pointed out the cross examination of the plaintiff and particularly the cross examination dated 14.02.2018 wherein the plaintiff had admitted that she was aware that the property had been settled in favour of the son of the defendant. The learned counsel also pointed out that subsequently, an application had been filed by the defendant to mark additional documents and a counter had also been filed for that particular application and in the said application, a list of documents had been given including the settlement deed and thereafter, orders had been passed in the said application. The settlement deed had been marked as an exhibit in the presence of the counsels and it was therefore stated that during the entire procedure, though the revision petitioner/plaintiff was always aware of the

fact that the settlement deed had been executed by the respondent/defendant in favour of her son, for reasons best known to the petitioner/plaintiff, she had not taken any steps to implead the settlee as a defendant.

8. The issue in the present suit relates to a property measuring to an extent of 363 sq.ft. The learned counsel stated that a parallel suit is also pending between the same parties with respect to property measuring 1023 sq.ft. In that particular suit also, the property had been settled by the defendant in favour of her son, same N.Vishuraj. An application seeking to implead the said son had been favourably considered and the son had been impleaded as a party to the suit. The learned counsel therefore stated that in the interest of justice, the applications should have been favourably considered by the trial Court and pointed out that the balance of convenience is in favour of the revision petitioner/plaintiff and that the impleaded party can always file his objections or written statement and can put up any defence that he is advised during the course of adjudicating the issues in the suit.

9. The learned Judge before whom the applications came up for consideration dismissed both the applications by a common order. The learned Judge proceeded on the issue of laches on the part of the revision petitioner in not filing these applications at an earlier point of time. As a matter of fact, it had been pointed out in the order that these applications have been filed at the time of delivery of Judgment to reopen the case and to implead the proposed party as a second defendant. It had been stated that though the revision petitioner claimed that it was only after receiving the certified copies of the suit documents that they came to know about the execution of the settlement deed, Ex.B-11 the settlement deed had been marked during trial after adopting proper procedure and therefore, the claim that the revision petitioner did not have knowledge about the said document cannot be accepted. It was also pointed out by the learned Judge that during the cross examination of PW-1, a suggestion had been put that the suit was hit by non joinder of necessary party. The learned Judge also pointed out the application to file additional documents filed by the respondent in which a categorical statement had been made about filing of this particular settlement deed along with other documents and that the said application was allowed only after counter has been filed on behalf of the

revision petitioner herein. The learned Judge also stated that Ex.B-11 was marked in the presence of both side counsels and therefore, the revision petitioner had come to Court. The learned Judge therefore was not inclined to allow the applications and dismissed both the applications leading to the filing of the present Revision Petitions.

10. I had given a patient hearing to both the learned counsels, who very forcefully put forth their respective cases. The arguments have been summarised above.

11. The suit in O.S.No. 2719 of 2016 has been now pending for the past 5 years before the XV Assistant Judge City Civil Court, Chennai. The suit had been filed seeking specific performance of a registered agreement of the year 1993 and in the alternate for return of the advance amounts paid pursuant to such agreement. The plaintiff, who comes to Court placing her case on an agreement of sale has a duty to ensure that the defendant still has authority and title to perform the agreement and has a further duty to examine whether the property mentioned in the agreement is still available for relief to be granted in the suit, namely specific enforcement of the

agreement, in which the said property is the subject matter. These are two basic conditions which the plaintiff should ensure before instituting a suit. The plaintiff cannot shirk responsibility and find fault on the defendant if the property is not available for specific performance or if the defendant does not have any authority on the date of the suit to specifically perform the terms of the agreement. In this case, the defendant had already settled the property in favour of her son in the year 2014. The suit was instituted subsequently only in the year 2016.

12. Ignorance of law cannot be cited as an acceptable reason before Court. Here the plaintiff claims ignorance of fact. The burden lies on the plaintiff to ensure that proper facts are pleaded, proper facts are stated and if there is any doubt, discover all relevant facts before instituting the suit. When the plaintiff has not done that particular exercise they cannot thereafter plead innocence and ignorance and find fault on the defendant in not disclosing about the execution of the settlement deed either in the reply notice or in the written statement or in the proof affidavit. The defendant has actually disclosed the same while cross examining the plaintiff and while filing application to file additional documents. She had specified this

particular settlement deed in the list of documents. She had marked the same during her chief examination. It had been marked as Ex.B-11. The Court records have also been produced and it is seen that Ex.B-11 was marked when both counsels were actually present.

13. I am very deeply concerned by the documents filed before this Court on behalf of the petitioner. Cross examination of the petitioner on 11.01.2018 plaintiff has been filed. But the cross examination conducted again on 14.02.2018 had not been filed. In the cross examination on 11.01.2018, the petitioner claimed that she did not know about the execution of the settlement deed, rather in her own words, she stated she did not know whether the property measuring 363 sq.ft., had been settled by the defendant in favour of her son N.Vishnuraj. In the cross examination on the subsequent date on 14.02.2018, she very specifically stated that the land measuring 363 sq.ft., had been settled by the defendant in favour of her son. Therefore, it is clear that this particular fact was to the knowledge of the plaintiff.

14. This particular aspect was tried to be brushed away by Mr. N.Rajan, by stating that the witness did not understand the nature of the questions put, but I would rather go with such a statement since it emanated from the witness herself and not given as an explanation by a counsel. The witness has grazed the witness box. She is on oath and I must appreciate she had come forward with a honest statement during cross examination. She admitted that she knew about the settlement deed with specific reference to 363 sq.ft., of land.

15. I am also conscious of the fact that application seeking to implead a party should not dismissed on the ground that the plaintiff should have impleaded the said individual at the time of institution of the suit. But here is a case of a settlement deed executed prior to the institution of the suit. Therefore, on the date of the filing of the suit, the said N.Vishnuraj was a necessary party. On the date of institution of the suit, the plaintiff should have been aware that any Judgment or any order or any decree, passed in the suit would directly affect the interest of the said N.Vishnuraj. Knowing that fact, having not impleaded the said N.Vishnuraj as a defendant goes to the root of the matter and the plaintiff will have to fall on

their own act or rather nonact of not impleading the said N.Vishnuraj. Non joinder of a necessary party is fatal to any case.

16. The arguments advanced by Mr.N.Rajan that the plaintiff was not aware and that she was ignorant of the settlement deed are aspects which may be advanced during the course of arguments in the suit but now it is too late in the day to claim ignorance of a settlement deed executed prior to the institution of the suit. In this case, the document had been executed prior to the institution of the suit which swings the pendulum in favour of the defendant. I would therefore not interfere with the order questioned in the revision petitions. I would direct the XV Assistant Judge, City Civil Court, Chennai, to deliver a Judgment on the basis of the available pleadings, on the basis of the available records and on the basis of the evidence already adduced.

17. Accordingly, these Civil Revision Petitions are dismissed. No order as to costs. Consequently, connected Miscellaneous Petitions are closed.

C.V.KARTHIKEYAN, J.

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18. A direction is given to the XV Assistant Judge, City Civil Court, Chennai, to dispose of O.S.No.2719 of 2016, which admittedly is in the stage of arguments, on or before 30.09.2021. I am confident that both the learned counsels would cooperate in such disposal of the suit.

20.07.2021

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Index: Yes/No
Internet: Yes/No.

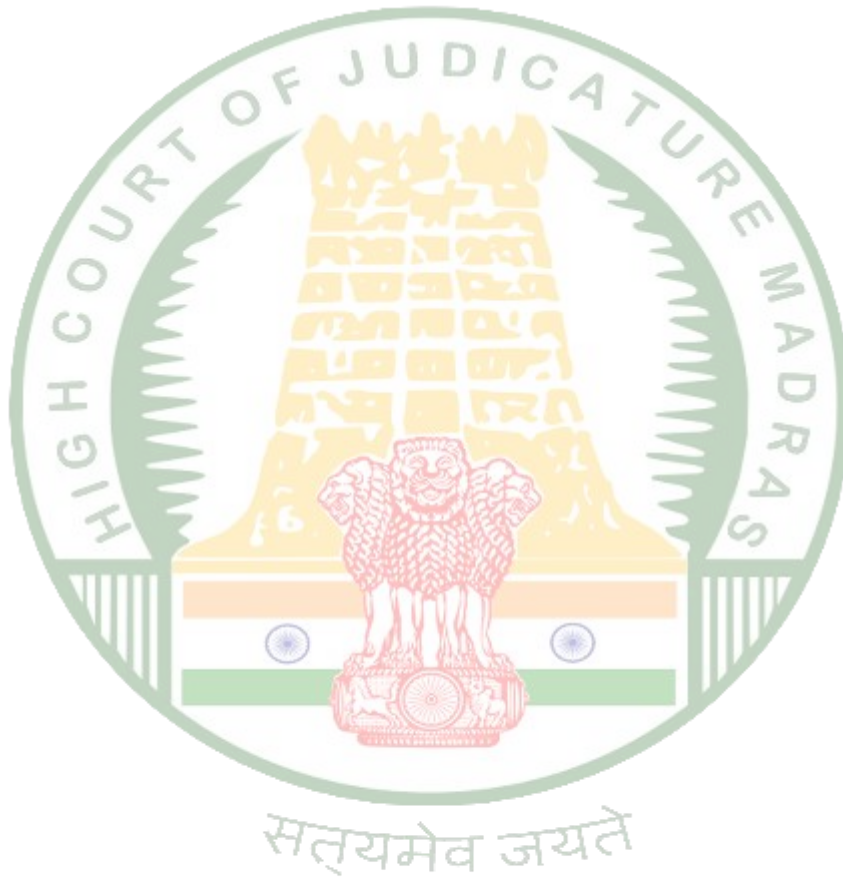
Speaking / Non speaking

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