

A.No.4888 of 2019
and
CS.No.516 of 2011

P.RAJAMANICKAM, J.

This application has been filed by the plaintiffs under Order XIV Rule 8 of Original Side Rules R/W Order XI Rule 14 of CPC, to direct the respondents/defendants to produce the original sale agreement dated 19.02.2011.

2. The learned counsel for the applicants/plaintiffs has submitted that originally one Tmt.R.Janaki has filed the above suit for specific performance of the sale agreement dated 19.02.2011 and during pendency of the said suit, the said Tmt.R.Janaki died and hence, the applicants 2 to 5 were impleaded as plaintiffs 2 to 5. She further submitted that the original sale agreement dated 19.02.2011 is in possession of the respondents/defendants and hence, they shall be directed to produce the said sale agreement before this Court.

3. Per contra, the learned counsel for the respondents/defendants has submitted that in the affidavit filed in support of this application, the second plaintiff, who is the husband of the original plaintiff has stated that the agreement for sale was executed at the defendants' Auditor's Office in Chennai, however, he was not able to trace out the original agreement which was kept by his wife namely, the original plaintiff and that being so, the contention of the the learned counsel for the applicants that the said original sale agreement is in possession of the defendants is not correct. He further submitted that the said sale agreement is not in possession of the defendants. He further submitted that since the plaintiffs have filed the suit for specific performance, it is for them to produce the original sale agreement and instead of producing the said sale agreement, the plaintiffs cannot blame the defendants as they are keeping the original sale agreement and therefore, he prayed to dismiss this application.

4. In para-4 of the affidavit filed in support of this application, the second applicant/second plaintiff has stated that the sale agreement was

executed at the defendants' Auditor's Office in Chennai, however, he was not able to produce the original agreement for sale which was kept by the deceased plaintiff. But in para-5, he has stated that the defendants in their written statement have not denied the fact of executing the agreement for sale dated 19.02.2011 and they are in possession of the said agreement and hence, the defendants should be directed to produce the said agreement. The aforesaid averments would clearly show that the second plaintiff is not having any personal idea about the possession of the said sale agreement.

5. It is to be pointed out that in para-11 of the plaint, the original plaintiff namely, Tmt.Janaki has stated that she left the original agreement for sale with the Auditor of the defendants and that being so, the plaintiffs have to take summons to the Auditor of the defendants to produce the said document and instead of that, they cannot file this kind of application under assumption that the said original sale agreement is in possession of the defendants. Therefore, this application is liable to be dismissed.

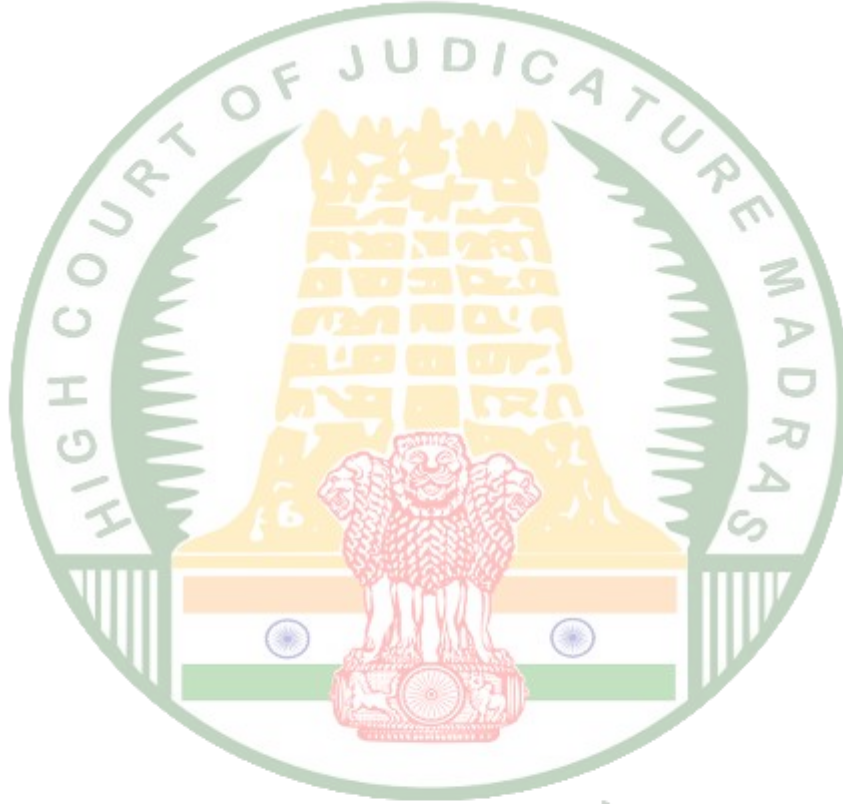
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6. In the result, this application is dismissed. No costs.

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