

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.No.353 of 2018

C.Rajendrakumar

... Petitioner

Vs.

1. N.Badrinath
2. M.Sundarambal
3. K.Rajalakshmi

... Respondents

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the docket order dated 26.07.2017 passed Memo in O.S.No.134 of 2011 on the file of the Sub-Court, Chidambaram.

For Petitioner : Mr.S.Sadasharam

For Respondents : Mr.V.Kubera for
: M/s.Rank Associates (for R1)
: Notice Dispense with vide Court
order dated 08.03.2018
(for R2 & R3)

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ORDER

This Civil Revision Petition is directed against the docket order dated 26.07.2017 passed in Memo in O.S.No.134 of 2011 on the file of the learned Sub Judge, Chidambaram, thereby rejecting the memo.

2. The petitioner is the third defendant, the first respondent is the plaintiff and the second and third respondents are the defendants 1 and 2. The first respondent filed a suit for declaration to declare that the sale deed dated 05.04.2010 executed by the second and third respondents herein in favour of the petitioner vide Document No.1729 of 2010 is null and void. In fact, earlier to the present suit, the petitioner herein also filed a suit for declaration to declare that the title of the same property in pursuant to the sale deed dated 05.04.2010. When the suit was posted for trial, the petitioner filed a memo stating that the burden is on the first respondent on Issue No.2 (Whether the sale deed dated 05.04.2010 executed by the second and third respondents herein in favour of the petitioner is null and void). Since this issue involves only a legal question, the first respondent is not letting any oral evidence on this issue now. On other issues in the

present suit and also the suit filed by the petitioner in O.S.No.153 of 2010 they were tried jointly with the present suit. Therefore, he prayed for reserving his right to lead in rebuttal, oral and documentary evidence on other issues, the first respondent is not letting oral evidence on Issue No.1 now. The said memo was recorded by the Court below and in fact, the petitioner herein also paid batta to summon the witness. The present suit also jointly tried along with O.S.No.153 of 2010 filed by the petitioner. At that juncture, again the petitioner filed a memo stating that he is not aware of the above detailed endorsement made by the first respondent on 05.04.2017, thereby reserving his right to lead in rebuttal evidence. Therefore, he prayed for direction to direct the first respondent to lead in oral and documentary evidence in the suit filed by him on all issues and also in the suit filed by the petitioner. The same was rejected and aggrieved by the same, the present Civil Revision Petition is filed.

3. The learned counsel for the petitioner submitted that the petitioner purchased the suit property by a registered sale deed and he is in possession and enjoyment of the suit property. When that being so, directing the petitioner to lead in evidence and permitting the first respondent to lead in

rebuttal evidence is in total violation of mandatory provisions of Section 110 of the Indian Evidence Act.

4. On a perusal of the records, it reveals that on a memo filed by the petitioner, he was permitted to let in rebuttal evidence after the evidence of defendants. Accordingly, the petitioner herein also let in evidence on his side. Thereafter, he filed a memo and it is nothing but an after thought. Therefore, the Court below rightly rejected the memo filed by the petitioner. As such, this Court finds no infirmity or illegality in the order passed by the Court below.

5. Accordingly, this Civil Revision Petition is dismissed. No costs.

22.04.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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G.K.ILANTHIRAIYAN,J.

Kv

To

1. The Sub Judge, Chidambaram.
2. The Section Officer,
V.R.Section, High Court of Madras.



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