

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P. (NPD) No.1707 of 2021
and C.M.P. No.13248 of 2021

K.V.Krishnamoorthy

...

Petitioner /
Plaintiff

versus

K.R.Vengidusamy

...

Respondent /
Defendant

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 03.03.2021 in I.A.No.4 of 2021 in A.S.No.39 of 2019 on the file of the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam against O.S.No.150 of 2013 on the file of the Sub Court, Gobichettipalayam.

For Petitioner

: Mr.N.Chinnaraj

For Caveator / Respondent

: Mr.V.Anandhamurthy

ORDER

This Civil Revision Petition is filed challenging the order dated 03.03.2021 in I.A.No.4 of 2021 in A.S.No.39 of 2019 on the file of the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam.

2. The petitioner filed the suit in O.S.No.150 of 2013 against the respondent, seeking the specific performance of the contract as per the Sale Agreement dated 14.02.2001. The case of the petitioner is that he entered into the Sale Agreement with the respondent on 14.02.2001 for the purchase of the suit property. The sale consideration was fixed at Rs.3,10,000/- and on the date of execution of the Sale Agreement, the entire sale consideration was paid and the possession was handed over to the respondent. Subsequently, the respondent has not come forward to execute the Sale Deed, therefore, the suit was filed.

3. The Suit was dismissed after contest. Against the dismissal of the suit, the petitioner preferred A.S.No.39 of 2019. During the pendency of the appeal, the petitioner filed I.A.No.4 of 2021 under Section

45 of the Indian Evidence Act and Section 151 of C.P.C. for sending the Sale Agreement dated 14.02.2001 along with admitted signature of the respondent for the opinion of the Handwriting Expert. This petition was contested by the respondent on the ground that this petition was filed only to protract the proceedings. The learned trial Judge considered the rival submissions and the materials, dismissed the petition. Against the said order of dismissal, the present Civil Revision Petition is preferred.

4. The learned counsel for the petitioner submitted that the Sale Agreement is true and genuine Sale Agreement. It was omitted to be sent to the Handwriting Expert along with the admitted signature of the respondent for comparison. This was held against the respondent and the suit was dismissed. Therefore, the present petition is filed.

5. The learned counsel for the respondent opposed this petition on the ground that even in the written statement, the execution of the Sale Agreement and the signature in the Sale Agreement were specifically denied. The Sale Agreement was not properly proved by the petitioner before the trial Court and therefore, it was rejected. Filing this

petition in the Appeal Court, is nothing but an exercise to protract the proceedings. Therefore, the learned counsel for the respondent prayed for dismissal of this petition.

6. As said earlier, the suit was filed for enforcing the specific performance of execution of the sale on the basis of the Sale Agreement dated 14.02.2001. Admittedly, it is an unregistered Sale Agreement. It is the claim of the petitioner that the entire sale consideration was paid on the date of Sale Agreement dated 14.02.2001. The question now arises is, when the petitioner was in a position to pay the entire sale consideration, what is the necessity for executing a Sale Agreement instead of directly registering a sale. It appears that there is no proper explanation.

7. It is seen from the written statement filed by the respondent that the signature in the Sale Agreement was specifically denied by the respondent. During the trial, the petitioner was examined as P.W.1 and the attester K.V.Gopalan was examined as P.W.2 to prove the Sale Agreement. The learned trial Judge considered the evidence of both P.W.1 and P.W.2 and came to the conclusion that both the witnesses have failed to

prove the execution of the Sale Agreement. One of the reasons stated for rejecting the Sale Agreement is that there was discrepancy with regard to the purchase of stamp papers used for executing the Sale Agreement. There is specific finding that there is no mention about the person, in whose name the stamp paper was purchased in the Sale Agreement. The respondent had taken steps to find out on whose name the stamp paper was purchased from the District Registrar's Office under Right to Information Act. He received the information that the particular stamp papers were not sent from the District Registrar's Office. The application filed under Right to Information Act and the reply had been marked as exhibits B.8 to B.10. The trial Court found that the petitioner has failed to prove the purchase of the stamp paper from the person, who alleged to have sold it. There are other reasons as well for rejecting the Sale Agreement.

8. As it is clear that the Sale Agreement was rejected for the reasons that the petitioner has failed to prove the execution of the Sale Agreement. Assuming without admitting that the signature in the Sale Agreement is that of respondent, it does not prove the execution of the Sale Agreement. Irrespective of proving the signature found in the Sale

Agreement, execution of the Sale Agreement must be proved. Petitioner has failed to prove the execution of the Sale Agreement before the trial Court. We cannot redo the entire exercise from the beginning. Admittedly, this application is filed belatedly at the stage of appeal. The learned trial Judge has considered these aspects and dismissed the petition. Therefore, this Court finds no reason to interfere with the finding of the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam and the order is confirmed.

9. Resultantly, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

24.08.2021

Speaking order / Non-speaking order

Index : Yes / No

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To

- 1.The III Additional District and Sessions Judge,
Erode, Gobichettipalayam.
- 2.The Sub Court, Gobichettipalayam.



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G.CHANDRASEKHARAN, J.

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