



C.R.P.(PD).No.2888 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD).No.2888 of 2021

and

C.M.P.No.20833 of 2021

1.S.Sivakumar

2.S.Hemamaini

.. Petitioners

Vs.

1.H.Mangalram

2.M.Puraram

3.Mahesh

4.Rekha

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to allow the above Civil Revision Petition by setting aside the fair order and decretal order dated 29.10.2021 passed by the learned II Additional District and Sessions Court, Tiruvallur at Poonamallee, dismissing I.A.No.1 of 2019 in O.S.No.142 of 2014 and allow I.A.no.1 of 2019 in O.S.No1.42 of 2014 as prayed for.

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For Petitioners : Mr.B.Hari Krishnan

For Respondents : Mr.M.A.Srinivasan for Caveator

ORDER

This Revision is against the order rejecting the application of the petitioners seeking issuance of subpoena to the witness named by them.

2. The petitioners have launched the suit in O.S.No.142 of 2014 seeking redemption of mortgage dated 21.01.2013. The case of the plaintiffs is that though the mortgage deed is for a sum of Rs.40,00,000/-, the defendants/ mortgagees paid only a sum of Rs.6,50,000/- on the date of the document and the document was executed for Rs.40,00,000/-.

3. During the course of the evidence of the plaintiffs, the plaintiffs have now come up with this application seeking subpoena to two attesting witnesses of the instrument and the Sub-Registrar. The trial Court had rightly dismissed the application on the conclusion that it is for the plaintiffs



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to prove that the defendants paid only a sum of Rs.6,50,000/- and not Rs.40,00,000/- as found in the document. The trial Court also found that the attesting witnesses need not know the contents of the document and official witness also will not be in a position to depose about what was the actual transaction between the parties.

4. Mr.B.Hari Krishnan, learned counsel appearing for the petitioners would contend that the examination of the these witnesses is sought for only to demonstrate before the Court that there was no cash transaction when the document came to be executed. He would submit that he can examine one of the attesting witnesses to the document even without summons being issued to him. As far as the other attesting witness, who is the son of the 1st defendant, he seeks summons since he may not be willing to depose on the side of the plaintiffs. As I had already pointed out examination of the attesting witness regarding contents of the document is wholly unnecessary more so when the plaintiffs do not deny execution of the document.



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5. As far as the Registrar is concerned, I do not think the trial Court can be faulted for dismissing the application since the Registrar now working at that station may not be able to depose about what happened at the time of registration of the instrument. I therefore do not see error in the order of the trial Court.

6. Hence, the Revision fails and it is accordingly **dismissed**. No costs. Consequently, the connected miscellaneous petition is closed. It will be open to the petitioners to examine the other attesting witness, if he is available. The trial Court is directed to dispose of the suit within a period of eight months from the date of the receipt of a copy of the order.

23.12.2021

dsa

Index : No

Speaking order



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To

The II Additional District and Sessions Judge,
Tiruvallur, Poonamallee.



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R.SUBRAMANIAN, J.

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