

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2021

CORAM

THE HON'BLE MR. JUSTICE A.D. JAGADISH CHANDIRA

**C.R.P. (PD) No. 3986 of 2017
and
C.M.P. No. 18601 of 2017**

1. Sakthivel

2. S.Kolanjiappan ... Petitioners

-VS-

Dhananchejhian ...
Respondent

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, 1950, praying to direct the Principal District Judge, Puducherry to dispose the I.A. No. 829 of 2017 in O.S. No. 115 of 2013 on the file of the Principal District Judge, Puducherry.

For Petitioners : Mr. R.Rajarajan

For Respondent : Mr. C.A.Diwakar

ORDER
(The case has been heard through video conference)

The Civil Revision Petition has been filed for a direction to the Learned Principal District Judge, Puducherry to dispose the I.A. No. 829 of 2017 in O.S. No. 115 of 2013 on the file of the Principal District Judge, Puducherry.

2. The case of the Petitioners/Defendants is that the Respondent/Plaintiff has filed the suit for specific performance of agreement dated 19.10.2011 alleged to have been executed by the Petitioners herein in his favour. The case of the Respondent/Plaintiff is that the sale consideration was fixed as Rs.15,00,000/- (Rupees Fifteen Lakh only) and that the Petitioners have received the advance amount of Rs.4,00,000/- (Rupees Four Lakh only) on the date of the agreement on 19.10.2011.

3. The Learned Counsel for the Petitioners/Defendants would submit that the alleged agreement of sale dated 19.10.2011 was executed only for the purpose of security towards the loan given by the Respondent/Plaintiff on 03.10.2011 to one Ezhumalai, who is the co-brother of the First Petitioner herein. He would further submit that the said Ezhumalai had executed a promissory note dated 03.10.2011 and the original promissory note was retained by the Respondent/Plaintiff and a photocopy was taken by the said Ezhumalai and the Respondent/Plaintiff had demanded to execute the alleged sale agreement as security for the loan given by him since the said Ezhumalai had to leave to France. He would further submit that the existence of the promissory note was mentioned in the reply notice and the same was also

reflected in the written statement. He would further submit that though the Respondent/Plaintiff had denied the existence of the promissory note in the plaint and the proof affidavit filed by him, he had admitted to the signature of his father found in the photocopy of the promissory note shown to him during the cross examination and thereby, the Petitioners/Defendants had filed I.A. No. 1898 of 2015 calling upon the Respondent/Plaintiff to produce the promissory note. He would further submit that however, the said application was dismissed by the Trial Court on 27.08.2015 and against the dismissal of that application, the Petitioners/Defendants have filed the C.R.P. No. 3882 of 2015 on the file of this Court and that was also dismissed as withdrawn. He would further submit that the Petitioners have filed the present application in I.A. No. 829 of 2017 under Order XI Rule 16 of the Code of Civil Procedure, 1908, read with Section 66 of the Indian Evidence Act, 1872, to mark the photocopy of the promissory note dated 03.10.2011, whereas the Trial Court had not passed any order in the application and the application has been kept pending and O.S. No. 115 of 2013 now stands posted for arguments and thereby, the present Civil Revision Petition has been filed seeking for a direction to the Learned Principal District Judge, Puducherry to dispose I.A. No. 829 of 2017 in O.S. No. 115 of 2013 at the earliest since the orders passed in the I.A. has a bearing in the gamut and the scope of the suit.

4. Per contra, the Learned Counsel for the Respondent/Plaintiff would vehemently oppose stating that the Respondent/Plaintiff at no point of time had admitted the existence of the promissory note. He would further submit that the Petitioners/Defendants have cunningly shown the signature of his father in the photocopy at the time of cross examination and the Respondent/Plaintiff has only admitted the signature of his father and not admitted the promissory note. He would further submit that even now, the Respondent/Plaintiff denies the existence of such promissory note. He would further submit that earlier, the Petitioners/Defendants filed an application calling upon the Respondent/Plaintiff to produce the promissory note and that was dismissed by the Trial Court by a detailed order. He would further submit that against that order, the Petitioners/Defendants have filed the C.R.P. No. 3882 of 2015 on the file of this Court and after detailed arguments, since this Court was not inclined to admit the same, the Counsel sought to withdraw the revision and it was dismissed as withdrawn. He would further submit that the Petitioners/Defendants are attempting to mark a fabricated photocopy of a document which never existed and that they cannot be legally allowed to mark a document which is inadmissible and not a document in the eye of law. He would further submit that there are several judgments of this Court and the Hon'ble Apex Court which

have held that documents which are inadmissible cannot be allowed to be marked by way of secondary evidence. He would further submit that the application in I.A. No. 829 of 2017 has been filed only with a view to delay the proceedings and protract the rendering of judgment in the suit. He would further submit that the Petitioners/Defendants have successfully dragged on the suit of the year 2013. He would further submit that a detailed argument was put forth with regard to the maintainability of the I.A. No. 829 of 2017 and the Trial Court finding that the application was not maintainable had deemed it fit to pass orders while rendering judgment in the suit.

5. At this juncture, the Learned Counsel for the Petitioners/Defendants would submit that atleast a direction may be issued to the Trial Court to dispose of the I.A. No. 829 of 2017 before the arguments could be advanced in the suit.

6. In reply, Learned Counsel for the Respondent/Plaintiff would submit that in the event of such an order being passed, a direction may be issued to the Trial Court to hear the parties on merits and a direction may be issued to the Trial Court to dispose of the I.A. No. 829 of 2017 and pass orders within a stipulated period so that the trial could be disposed of expeditiously.

7. In view of the above, a direction is issued to the Learned Principal District Judge, Puducherry to hear both sides on merits and dispose of the I.A. No. 829 of 2017 within a period of two weeks from the date of receipt of a copy of this order and thereafter, dispose of the O.S. No. 115 of 2013 as expeditiously as possible. It is made clear that both parties shall co-operate with the Trial Court for expeditious disposal of the suit.

8. With this observation, this Civil Revision Petition is disposed of. Consequently, the connected Miscellaneous Petition is closed. No costs.

21.04.2021

vjt

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

To

The Principal District Judge,
Puducherry.

WEB COPY

A.D. JAGADISH CHANDIRA, J.

vjt



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