



C.R.P.(PD).Nos.62 & 65 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).Nos.62 & 65 of 2022

&

C.M.P.No.384 of 2022

S.Santhamani

...Petitioner in both CRPs

Vs

1.N.Palanivelu

2.S.Chandrasekar

3.R.Poongodi

... Respondents in both CRPs

Prayer in C.R.P.No.62 of 2022: Civil Revision Petition is filed under Article 227 of the Constitution of India against the Fair and decretal order dated 16.12.2021 made in I.A.No.12 of 2021 in O.S.No.274 of 2018 on the file of the learned Sessions Court (Fast Track Mahila Court), Namakkal.



C.R.P.(PD).Nos.62 & 65 of 2022

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Prayer in C.R.P.No.65 of 2022: Civil Revision Petition is filed under Article 227 of the Constitution of India against the Fair and decreetal order dated 16.12.2021 made in I.A.No.13 of 2021 in O.S.No.274 of 2018 on the file of the learned Sessions Court (Fast Track Mahila Court), Namakkal.

For Petitioners : Mr.N.Manoharan

For Respondent 1: Mr.S.Adarsh Subramanian

For Respondents : Not ready in notice
2 & 3

COMMON ORDER

Challenging the order dismissing her applications to reopen the evidence on the plaintiff's side and recall P.W.2 and P.W.3, the 1st defendant is before this Court. The brief facts are as follows.



C.R.P.(PD).Nos.62 & 65 of 2022

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2. The suit O.S.No.274 of 2018 had been filed by the 1st respondent herein against the 1st defendant / revision petitioner who was the wife of one, R.Sundaram. The 2nd and 3rd respondents had been impleaded as the 2nd and 3rd defendants by orders in I.A.No.3 of 2019 dated 20.01.2020. The parties are referred to in the same litigative status as before the Trial Court.

3. The case of the plaintiff is that the property belonged to one R.Sundaram, the husband of the 1st defendant who had died on 23.10.2005, leaving behind the 1st defendant as his sole survivor.

4. The agreement of sale dated 01.08.2012 was entered into between the 1st defendant and the plaintiff, in and by which the plaintiff had agreed to purchase the suit schedule property for a sum of Rs.22,50,000/- and an advance of Rs.7,50,000/- was paid. The xerox copy of the documents was also handed over to the plaintiff / 1st



respondent.

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5. The balance sum was repayable within a period of 30 months from the date of sale agreement. It is the case of the plaintiff / 1st respondent that further sum of Rs.5,00,000/- was received by the 1st defendant on 24.12.2014, for which an endorsement had been made on the reverse of the agreement of sale. The plaintiff would submit that despite their several request the 1st defendant was prevaricating and not coming forward to execute the sale.

6. On 17.10.2018, legal notice was caused to be issued on the 1st defendant calling upon him to come before the Sub-Registrar's Office at Tiruchengode, at 10 AM on 24.12.2018 for receiving balance sale consideration and to execute the sale deed. However, the 1st defendant failed to turn up. During the pendency of suit, the 1st defendant has sold the property to the defendants 2 and 3 who had therefore been



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impleaded as parties. Since the 1st defendant was not coming forward to execute the sale deed, the plaintiff has come forward with the suit, where an alternative relief of refund of the advance amount was also sought for.

7. The case of the 1st defendant is that the plaintiff is a total stranger to her. She has never entered into an agreement of sale nor received any amount from him and the sale agreement is forged document. The signature found in the sale agreement is not the signature of the 1st defendant. The fabrication of the document is more evident from the fact that the signature of the document writer is shown as S.Jaganathan, who is no more. The sale agreement has been created after the demise of the document writer. The 1st defendant had set out various factors which would show that the document in question was a rank forgery in her written statement.



C.R.P.(PD).Nos.62 & 65 of 2022

WEB COPY

8. The 1st defendant would further submit that she is the sister of one Rajendran and there was an enmity between her brother Rajendran and her cousin Sakthivel Raja, in respect of partitioning the ancestral property at Tiruchengode Village, which is the subject matter of the suit O.S.No.104 of 2014 on the file of the Subordinate Court, Tiruchengode. Apart from that, another suit in O.S.No.471 of 2004 for partition and separate possession is also pending in which both Rajendran and Sakthivel Raja are parties. Her brother had been indebted to several persons for the loan he had borrowed for carrying on his rig business.

9. The 1st defendant who was solely depending on her brother Rajendran, with a view to helping her brother had offered to sell one of her properties comprised in S.No.173/4 at Tiruchengode Village. Sakthivel Raja, on coming to know about the same, with a view to get an unlawful gain, has created this forged agreement of sale dated

6/14



C.R.P.(PD).Nos.62 & 65 of 2022

WEB COPY

28.07.2012 and filed a suit for specific performance and permanent injunction in O.S.No.135 of 2018, which is also pending on the file of the Principal District Court, Namakkal. He has also created another sale agreement in the name of one of his close allies, Thirumoorthi of Sathyamangalam and filed O.S.No.9 of 2019, which is pending on the file of the Additional District Court, Namakkal. The document copies filed along with the suit may be taken from the xerox copies given to the brokers. The 1st defendant would therefore submit that the suit has to be dismissed.

10. An additional written statement was filed after the amendment of the plaint stating that when the sale had been executed in favour of the defendants 2 and 3 they were totally in the dark about the pendency of the instant suit as no summons had been served on them.



C.R.P.(PD).Nos.62 & 65 of 2022

WEB COPY

11. The 1st defendant / revision petitioner would submit that after the cross examination of P.W.2 and P.W.3 had been concluded, it suddenly struck her no questions regarding the signature of the document writer had been put to them, particularly when in the written statement the 1st defendant / revision petitioner has in very great detail set out that the signature of the document writer in the document is a forged one. The applications have been filed within a period of 6 days i.e., 29.11.2021 by the 1st defendant for reopening the evidence and recalling P.W.2 and P.W.3 for cross examination.

12. The plaintiff / respondent had filed a counter inter alia contending that P.W.2 and P.W.3, who are the witnesses have nothing to do with the preparation of the document and therefore no necessity to recall them. Further, the 1st defendant did not ask questions to P.W.1 about the signature and therefore there was no necessity to put these questions to the witnesses. The applications are only an attempt



C.R.P.(PD).Nos.62 & 65 of 2022

to harass the witnesses and therefore the same have to be dismissed.

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The learned Sessions Judge (Fast Track Mahila), Namakkal by her order dated 16.12.2021 dismissed the said applications.

13. The learned Judge by her order in I.A.No.13 of 2021, which was the application for recalling P.W.2 and P.W.3 for further evidence, relied upon the Judgement and Decree of the Hon'ble Supreme Court reported in **2016 (11) SCC 296 – Ram Rati Vs. Mange Ram (Dead) through legal representatives**, wherein, the Hon'ble Supreme Court has observed that *the power under Order XVIII Rule 17 of the Code of Civil Procedure has to be sparingly used to enable the Court to clarify any doubts. This power cannot be used by the litigant to fill up lacuna.*

14. The learned Judge has also observed that no explanations have been given as to why the questions which were mentioned to be asked now were not put to the witnesses on the earlier occasion and



C.R.P.(PD).Nos.62 & 65 of 2022

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since no sufficient reasons have been given, the applications deserve to be dismissed.

15. In the light of the order passed in I.A.No.13 of 2021, the learned Judge dismissed the application in I.A.No.12 of 2021, which was the application filed for reopening the plaintiff's side evidence. Challenging the dismissal of the above applications, the 1st defendant / revision petitioner is before this Court.

16. Heard the learned counsel on either side and perused the records.

17. The 1st defendant has elaborately set out in her written statement the details about how the agreement of sale marked as Ex.A.1 is a rank forgery and the fact that the signature of the document writer affixed on this agreement of sale was itself a forged one since on

10/14



C.R.P.(PD).Nos.62 & 65 of 2022

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the date of the alleged agreement of sale, the document writer was no more. In the affidavit filed in support of the impugned petitions, the 1st defendant has clearly stated that questions regarding the above has not been put to the witnesses and it is for this reason that the 1st defendant is sought to reopen the evidence and recall P.W.2 and P.W.3.

18. The argument of the learned counsel for the plaintiff / respondent is that the 1st defendant / revision petitioner has not set out any new fact, which was not within their knowledge for allowing this application. This argument cannot be countenanced since the provisions of Order XVIII Rule 17 of the Code of Civil Procedure does not prescribe the circumstances / grounds for invoking the provisions. On the contrary, Rule 17 says that at any stage of the suit, the witness can be recalled and can be examined, subject to the law of evidence, such questions could be put to him as the Court deems fit.



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19. Rule 17 A which the learned counsel seeks to rely upon has been omitted with effect from 01.07.2002 by the Code of Civil Procedure (Amendment) Act, 1999. The Judgement reported in **2016 (11) SCC 296 – Ram Rati Vs. Mange Ram (Dead) through legal representatives**, which has been relied upon by the plaintiff / 1st respondent is a case where five years after the evidence had been closed, the respondents therein have sought to reopen the evidence and recall the witnesses. The fact of that case does not apply to the facts of the instant case, since, in the instant case within 6 days of the conclusion of the cross examination, the impugned applications have been filed.

20. In the above circumstances, the orders passed by the learned Sessions Judge (Fast Track Mahila Court), Namakkal have to be set aside and are accordingly set aside and the Civil Revision Petitions are allowed.



C.R.P.(PD).Nos.62 & 65 of 2022

WEB COPY

21. The learned counsel for the 1st defendant / revision petitioner informed that the case is listed on 31.03.2022. It is therefore directed that the cross examination of P.W.2 and P.W.3 shall be concluded on the very same day. The learned Judge shall proceed to dispose of the suit thereafter, within a period of 2 months i.e., on or before 31.05.2022.

17.02.2022

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Index : Yes/No
Speaking order/non-speaking order

To

1.The Sessions Judge (Fast Track Mahila),
Namakkal



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C.R.P.(PD).Nos.62 & 65 of 2022

P.T.ASHA, J.,

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C.R.P.(PD).No.62 & 65 of 2022

17.02.2022