



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2022

CORAM:

THE HON'BLE Mr. JUSTICE N.SESHASAYEE

C.R.P(PD)No.305 of 2022
and C.M.P.No.1444 of 2022

C.Fasiur Rahaman
S/o.C.Fazlur Rahaman
Represented by his power agent
C.Mujeetha Parveen
W/o.C.Fazlur Rahaman

...Petitioner/Plaintiff

Vs.

1.V.Franklin Thomas
S/o.P.Valsan

2.Sudhakar Reddy
S/o.Venkatesubba Reddy

...Respondents/Defendants

PRAYER: The Civil Revision Petition is filed under Article 227 of Constitution of India, against the Fair and Decreetal order dated 04.10.2021 passed in I.A.No.1 of 2019 in O.S.No.2318 of 2015 passed by the XXI Additional City Civil Court, Allikulam and consequently to allow the application in I.A.No.1 of 2019.

For Petitioner :Mr.L.Gavaskar

For Respondents :Mr.P.Rajkumar Pandian for R2

O R D E R

The present revision is taken out by the plaintiff in O.S.No.2318 of 2015 challenging the order passed in I.A.No.1 of 2019, which the plaintiff / revision petitioner has taken under Order XI Rule 14 C.P.C. for directing the 1st defendant to produce a certain sale agreement.

2.The circumstances that led to the filing of the aforesaid application may be stated :

- According to the plaintiff, he entered into a sale agreement with the first defendant, dated 30.04.2008 for purchase of the suit property for a total sale



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consideration of Rs.20 lakhs. Out of this, Rs.10 lakhs was paid as advance under the sale agreement, and the balance sale consideration remains to be paid is Rs.10 lakhs. The contract stipulated one month's time for performance of mutual contractual obligation. Be that as it may, according to the plaintiff, after the expiry of one month's time, he approached the first defendant for completing the sale, and he was told that the property to be sold to the plaintiff under the aforesaid sale agreement was outstanding on a mortgage with M/s.ICICI Bank. The plaintiff was also informed the loan liability to it was around Rs.25 lakhs. The plaintiff therefore offered to the 1st defendant that he would pay the balance sale consideration of Rs.10 lakhs directly into M/s.ICICI Bank. Accordingly he did pay the remaining Rs.10 lakhs too, but into the loan account of the 1st defendant. Now given the change of circumstances, the 1st sale agreement came to be novated by another sale agreement dated 20.07.2012. While so, the 1st defendant did not honour his commitment under the 2nd sale agreement but has chosen to sell the property to the 2nd defendant in the suit. This Court is informed that the sale in favour of the 2nd defendant was subsequent to the 2nd sale agreement which the plaintiff had entered into with the 1st defendant, and in the suit, the 1st defendant chose to remain exparte as would be anticipated and the 2nd defendant contested.

3.The trial of the suit has commenced, and in the course of trial, the plaintiff tried to introduce a photostat copy of the 1st sale agreement before the Court. Its marking was objected to by the 2nd defendant. It is in this circumstances the plaintiff has taken out an application in I.A.No.1 of 2019 for a direction to the 1st defendant to produce the original sale agreement.

4.The learned trial Judge has dismissed this application and paragraph 9 of the trial order reads as below;

"9.No right under the first sale agreement survive when it is novated by virtue of the second sale agreement. Therefore production of the first sale agreement cannot be said to be indispensable for the trial of suit. Further if the petitioner still feels it must be exhibited, then he has got his chances when the defendants adduce evidence or through other modes. Therefore, this court holds that there is no



merit in this application and as such is inclined to dismiss the same."

5. Learned counsel for the revision petitioner submitted that the circumstances in which the second sale agreement came to be executed, and how the plaintiff has performed entirely his part of the contract by the time he entered into the second sale agreement have not been adequately captured in that agreement. Unless the first agreement is produced, the plaintiff may not be able to establish the circumstances under which he has paid the entire loan outstanding which exceeded the balance sale consideration of Rs.10 lakhs.

6. Learned counsel for the respondent / 2nd defendant contended that nowhere in the plaint or even in the affidavit of chief examination, the plaintiff has indicated that the original of the first sale agreement is with the 1st defendant. He also supported the line of reasoning of the learned trial Judge extracted above. He also expressed his concern that the plaintiff is taking considerable time to complete the trial, and this application is taken out only to drag on the matter.

7. In response, the learned counsel for the revision petitioner submitted that because the second defendant objected to the marking of the photostat copy of the first sale agreement, he was constrained to take out this application.

8. Application of procedure can hardly be straight jacketed, The functional character of procedural law is its elasticity and flexibility, and the procedural law may not be treated as a tool to discipline the litigants. If the case is tested on these broad aspects of procedural law, it must be stated that every litigant must have absolute opportunity to produce the best evidence which he / she / it considers necessary for establishing the cause of action or defence in a civil suit.

9. Here is the plaintiff who wants to establish the circumstances in which the second sale agreement which he has mentioned came into existence. This opportunity the plaintiff shall have, but subject to the rule of relevancy and admissibility. It is now premature to forecast on the possible impact the production of the first sale agreement may leave on the ultimate result of the suit, but to telescope it in an application under Order XI Rule 14 may not be appropriate. That has to be ascertained only after trial. The plaintiff must be allowed to produce the best evidence that he considers as the best to sustain his cause of action. If the primary evidence



pertaining to the first sale agreement dated 20.07.2012, could not be procured, it is then open to the plaintiff to move the Court for receiving the photostat copy which he now wants to introduce in the suit. The second defendant / respondent will have all the opportunity to object to the relevancy and admissibility which the trial Court may decide during the final disposal of the suit, unless it relates to an objection relating to insufficient stamping.

10.The Civil Revision Petition stands disposed of accordingly. The trial Court is further instructed to dispose of the matter within a period of four (4) months excluding the intervening summer vacation. Consequently, the connected C.M.P.No.1444 of 2022 is closed. No costs.

s/d-
Assistant Registrar(CS-IV)

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Sub-Assistant Registrar

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To

The XXI Additional Judge
City Civil Court
Allikulam, Chennai

+1 CC to Mr.P.Rajkumar Pandian, Advocate sr 16731
+2 Ccs to Mr.L.Gavaskar, Advocate sr 16564.

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and C.M.P.No.1444 of 2022

GPL(CO)
SP(21/04/2022)