



C.R.P(PD)No.1502 of 2020
and CMP.No.8861 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

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and

CMP.No.8861 of 2020

M/s.Kgeyes Residency (P) Ltd.,
Rep. By its Managing Director,
Mr.P.V.Shanmugam
“Srushitissthai”,
10, II-Cross Street,
Chennai – 600 028.

..Petitioner

Vs.

1.M/s.Rukmani Road Ishwarya Apartment
Owners' Association, a registered Association
under T.N.Act 27 of 1957,
Plot No.48, Rukmani Road,
Kalakshetra Colony, Besant Nagar,
Chennai – 600 090,
Rep. By its Authorised Agent & Secretary,
Mr.Ramamoorthy Ramkumar

2.Vilayanur Subramanian Ramachandran

3.S.Venkatasubramaniam

4.The Sub-Registrar,
Saidapet Registrar's Office,
Chennai.

..Respondents



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Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order of the learned XVII-Additional Judge, City Civil Court, Chennai in IA.No.2 of 2019 in OS.No.6503 of 2015.

For Petitioner : Mr.R.Parthasarathy
For Respondents : Mr.B.Sasikumar for
M/s.Lenin & Bhagya for R1
Mr.A.Kumaravel for R4

ORDER

This revision is directed against an order of the Trial Court, dismissing an application filed by the petitioner, who is the 1st defendant in OS.No.6503 of 2015, seeking to reject the proof affidavit of PW2 to eschew the subsequent chief-examination.

2.The suit in OS.No.6503 of 2015 was filed as CS.No.457 of 2009 by the 1st respondent herein, seeking a declaration that the sale deed dated 31.03.2003 registered as Document No.1511 of 2003 is null and void and for consequential reliefs of mandatory injunction and recovery of possession.



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The plaintiff is an Association of apartment owners and the 1st defendant is a builder. During the course of the suit, one Chidambaram was examined as PW1 and upon completion of his cross-examination, the plaintiff filed an application in IA.No.1 of 2019, seeking to produce additional documents. The said application was allowed on 16.10.2019. One Ramamoorthy Ramkumar filed a proof affidavit as PW2. In the said proof affidavit, he repeated whatever has been stated by PW1 in his proof affidavit filed in July, 2017. After application in IA.No.1 of 2019 was allowed, the said Ramamoorthy Ramkumar also deposed regarding the documents that were produced pursuant to the order in IA.No.1 of 2019. Thereafter, the 1st defendant in the suit, the petitioner herein came up with an instant application contending that the witness namely, PW2 has been examined only to fill up the lacunae in the evidence of PW1. This application was filed drawing inspiration from certain statements made in the proof affidavit of PW2. The Trial Court, dismissed the application on the conclusion that it is open to the plaintiff to examine any number of witnesses and the defendant cannot seek to eschew the evidence of the witness on the side of the plaintiff as the defendant has an opportunity to cross-examine the witness.



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3.I have heard Mr.R.Parthasarathy, learned counsel appearing for the petitioner, Mr.B.Sasikumar, learned counsel appearing for the 1st respondent and Mr.A.Kumaravel, learned Additional Government Pleader appears for the 4th respondent. R3 is sailing with the petitioner and R2 is not contesting.

4.Mr.R.Parthasarathy, learned counsel appearing for the petitioner would submit that once the application to condone the delay in filing documents was allowed and it was open to the plaintiff to examine a person to mark those documents. PW2 cannot be examined to fill up the lacunae that occurred in the evidence of PW1. Citing relevant averments in the proof affidavit filed by PW2 wherein, it is stated Chidambaram was not able to effectively answer certain questions and therefore, PW2 is being examined, Mr. R.Parthasarathy would contend this is nothing a clear attempt to fill up the lacunae.

5.Contending contra, Mr.B.Sasikumar, learned counsel appearing



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for the 1st respondent would submit that there was no attempt to fill up the lacunae. PW2 was examined only to produce documents, which were permitted to be filed in IA.No.1 of 2019, it was not to fill up the lacunae that was created in the cross-examination of PW1. I have considered the rival submissions.

6.A perusal of the affidavit of PW2 would show that he has made a specific statement that Chidambaram, who was examined was unable to answer certain questions on important aspects and hence, he is being examined as PW2. Admittedly, no list of witnesses was filed. There was a non-compliance with the provisions of Order 16 of the Code. However, the Court has the power to permit examination of a witness, whose name is not found in the list of witness for sufficient reasons. But, a witness cannot be examined to fill up the lacunae in the evidence, which is already on record. The evidence of PW2 which, according to Mr.B.Sasikumar, is only to produce documents, should be confined to the production of documents only and he shall not traverse other matters spoken to by PW1. The proof affidavit that has been filed by PW2 in June 2019 will stand eschewed.



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PW2 is permitted to file a fresh proof affidavit wherein, he will confine to the documents that are permitted to be marked in IA.No.1 of 2019 and upon filing of such proof affidavit, he could be cross-examined by the counsel for the petitioner/ 1st defendant in the suit. This civil revision petition is therefore, allowed, the order of the Trial Court, dismissing IA.No.2 of 2019 is set aside subject to the above observations. No costs. Consequently, connected miscellaneous petition is closed.

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To-

The XVII Additional City Civil Court,
Chennai.



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R.SUBRAMANIAN, J.

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