



C.R.P.Nos.1907 and 2009 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2022

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THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.Nos.1907 and 2009 of 2019
and C.M.P.Nos.12559 and 13021 of 2019

1. M.Madhivathani
2. C.Munusamy

.. Petitioners **in both C.R.Ps**
Vs.

Dr.S.Banupriya
Represented by her Power Agent,
M.Balasubramanian

.. Respondent **in both C.R.Ps**

Common Prayer:- Civil Revision Petitions filed under Article 227 of Constitution of India to set aside the Fair and Decreetal orders dated 01.02.2019 made in I.A.No.1067 of 2018 and I.A.No.2070 of 2018 in O.S.No.52 of 2014 on the file of the Principal District Judge at Puducherry and consequently allow the petitions.

In both C.R.Ps

For Petitioners : Mr.U.Karunakaran
For Respondent : Mr.P.Mani

COMMON ORDER

These Civil Revision Petitions have been filed to set aside the Fair and Decreetal orders dated 01.02.2019 made in I.A.No.1067 of 2018 and I.A.No.2070 of 2018 in O.S.No.52 of 2014 on the file of the Principal District Judge at Puducherry and consequently allow the petitions, thereby dismissing the



petitions seeking permission to file additional written statement and to frame additional issues.

2. The respondent herein filed a suit in O.S.No.52 of 2014 for specific performance as against the petitioners herein. Immediately after receipt of summons, the petitioners filed their written statement. When the suit is ripe for trial, the petitioners filed applications to file additional written statement and to frame additional issues.

3. A perusal of the written statement filed earlier revealed that the petitioners reserved their right to file additional written statement at a later stage along with documents. However, the Court below dismissed both the applications.

4. The learned counsel for the revision petitioners would submit that the earlier counsel on record died and as such the petitioners intended to elaborate their written statement which were already filed by the earlier counsel on record.

5. The learned counsel for the respondent would submit that the first



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petitioner is the owner of the property and through the Power of Attorney viz.,

the second petitioner herein, he executed an agreement for sale. Both are husband and wife. In fact, the second petitioner is an Advocate. Therefore, only to drag the proceedings they filed the present applications. In fact, the Trial Court already confirmed the issue in the same line and now the petitioners intend to recast the same issue. Therefore, the Court below rightly dismissed the applications.

6. Heard both sides.

7. A perusal of documents revealed that according to the respondent, the petitioners are the defendants and they are husband and wife. The first petitioner is the owner of the property. Through, his Power of Attorney i.e, the second petitioner herein, he executed an agreement for sale. Therefore, the petitioners failed to execute the sale deed and as such the respondent filed a suit.

8. A perusal of the affidavit filed by the petitioners reveals that the



following issues have been framed,

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“ 1) Whether there is any cause of action to file the suit for specific performance by the plaintiff against the defendants?

2) Whether any privity of contract between the plaintiff and the defendants as alleged in sale agreement dated 06.06.2011?

3) Whether the alleged earnest amount of Rs.36,00,000/- (Rupees thirty six lakhs only) as mentioned in the deed was paid by the plaintiff, on which mode of payment?”

9. That apart, the agreement holder also filed a suit through her Power of Attorney. When the power holder intended to depose before the Trial Court on behalf of the Principal, the petitioners objected the same and finally the Principal came before the Trial Court and filed her proof affidavit. However, she did not enter into the box and mark the documents. Therefore, the Trial is not yet commenced and no prejudice will be caused to the respondent, if the petitioners are allowed to file their additional written statement and additional issues are framed.

10. In view of the above, the orders passed by the Court below cannot be sustained and it is liable to be set aside. The respondent is permitted to file her reply statement to the additional written statement to be filed by the petitioners and on receipt of the same, the Trial Court is directed to frame the additional issues and complete the Trial, within a period of six months from the date of



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receipt of a copy of this order.

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11. Accordingly, the Fair and Decreetal orders dated 01.02.2019 made in I.A.No.1067 of 2018 and I.A.No.2070 of 2018 in O.S.No.52 of 2014 on the file of the Principal District Judge at Puducherry, are hereby set aside.

12. In the result, these Civil Revision Petitions are allowed. Consequently, connected Miscellaneous petitions are closed. No costs.

23.12.2022

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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G.K.ILANTHIRAIYAN,J.



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To

The Principal District Judge, Puducherry.

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