



*C.R.P.Nos.2191 to 2193 of 2020
and C.M.P.No.13832 of 2020*

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2022

CORAM

THE HONOURABLE Mrs. JUSTICE **R.HEMALATHA**

C.R.P.Nos.2191 to 2193 of 2020
and C.M.P.No.13832 of 2020

1. S.N.Paramasivam
S/o.M.Natesa Gounder
2. P.Saravanan
S/o.Paramasivam
3. Pavayee
W/o.Paramasivam
4. Deivanayagi
W/o.P.Sathivel

... Petitioners in all CRPs.

Vs.

1. R.Chandra
W/o.V.P.Radhakrishnan
2. R.Gopalakrishnan
S/o.V.P.Radhakrishnan

... Respondents in all CRPs.

Prayer : Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and decretal order dated 22.07.2020 made in I.A.Nos.01, 02 & 03 of 2020 in O.S.No.92 of 2011 respectively on the file of the Subordinate Judge, Tiruchengode.

For Petitioner in all CRPs : Mr.R.Marudhachalamurthy

For Respondents in all CRPs : Mr.T.L.Thirumalaisamy



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*C.R.P.Nos.2191 to 2193 of 2020
and C.M.P.No.13832 of 2020*



C.R.P.Nos.2191 to 2193 of 2020
and C.M.P.No.13832 of 2020

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COMMON ORDER

The revision petitioners are the defendants in O.S.No.92 of 2011 on the file of Sub Court, Tiruchengode.

2. The respondents/plaintiffs filed a suit for a declaration that the settlement deed dated 11.03.2011 executed by the first defendant in favour of the fourth defendant is null and void and for specific performance of the contract dated 06.02.2011. They further prayed for a permanent injunction restraining the defendants from alienating or encumbering the suit properties. The defendants filed a written statement and both the parties went for trial, after settlement of issues. Subsequently the defendants were set *ex parte* on 08.02.2012 and an *ex parte* decree was passed on the same day. On a petition under Order IX Rule 13 CPC filed by the defendants, the *ex parte* decree was set aside on 29.06.2012. The evidence on the side of both the plaintiffs and the defendants was closed and the suit is now posted for arguments. At that stage, the plaintiffs filed the following petitions:

(i) I.A.No.1 of 2020 under Section 151 of The Code of
Civil Procedure, 1908 to reopen the case;



*C.R.P.Nos.2191 to 2193 of 2020
and C.M.P.No.13832 of 2020*

WEB COPY

(ii) I.A.No.2 of 2020 under Order XVIII Rule 17 of The Code of Civil Procedure, 1908 to recall PW-1 for the purpose of marking the sale agreement dated 12.02.1998;

(iii) I.A.No.3 of 2020 under Order VII Rule 14 of The Code of Civil Procedure, 1908 to receive document mentioned in the petition.

3. The respondents filed their counter affidavit and after full contest, the learned Subordinate Judge, Thiruchengode vide his orders dated 22.07.2020 allowed all the applications on payment of costs. Aggrieved over the same, the present Civil Revision Petitions have been filed.

4. Mr.R.Marudhachalamurthy, learned counsel appearing for the revision petitioners would contend that the plaintiffs did not file the sale agreement dated 12.02.1998 along with the plaint and the same was filed before the Court only on a memo filed by the defendants. Thereafter, though the plaintiffs were cross-examined with reference to the said document, they did not mark the same as an exhibit. His specific contention is that after the conclusion of trial and when the matter is posted for arguments, the present applications have been filed by the plaintiffs only to protract the proceedings and that they



C.R.P.Nos.2191 to 2193 of 2020
and C.M.P.No.13832 of 2020

were not vigilant in marking the sale agreement dated 12.02.1998. It is also his contention that if the said document is allowed to be marked at this stage, the defendants would be prejudiced.

5. Per contra, Mr.T.L.Thirumalaisamy, learned counsel appearing for the respondents drew the attention of this Court to the orders passed by the trial Court and contended that only on the basis of the earlier sale agreement dated 12.02.1998, the suit sale agreement dated 11.03.2011 came to be executed and inadvertently it was omitted to be marked by the plaintiffs. He would further contend that there is a specific pleading in the plaint with regard to the sale agreement dated 12.02.1998 and also with regard to the documents, which are sought to be filed at this stage.

6. It is true that at the fag end of the trial, the defendants want to mark certain documents. It is seen from the Court records that PW1 was also cross examined on this aspect. The revision petitioners did not take steps immediately thereafter to mark the said document. However, a perusal of the plaint shows that there is a reference about the earlier sale agreement dated 12.02.1998. It is appropriate to extract paragraphs (III) and (IV) of the plaint:-

"III) That the plaintiffs and defendants entered into a sale agreement dated 12.02.1998 regarding the suit properties and



C.R.P.Nos.2191 to 2193 of 2020
and C.M.P.No.13832 of 2020

WEB COPY

other properties for a sum of Rs.19,750/- (Rupees Nineteen Thousand Seven Hundred and Fifty only) per cent (ஒரு செண்ட்டுக்கு) and initially the defendants received a sum of Rs.2,50,000/- (Two Lakh Fifty Thousand only) as advance on that day itself and subsequently the defendants received part sale prices at several times from the plaintiffs and made endorsements for the same and the defendants alienated maximum lands and handed over the possession of the remaining lands to the plaintiffs on 28.01.2002 and agreed to execute sale deeds regarding the same to the plaintiffs or to their order at any time without fixing the sale period, since entire sale amount has been settled to the defendants by the plaintiffs.

(IV) The plaintiffs submit that while being so, since the major properties mentioned in the above sale agreement dated 12.02.1998 were sold and alienated, and since the description of properties are not clear and particulars regarding the remaining properties, and since the endorsements made in the above sale agreement are not clear and proper, and since a General Power of Attorney dated 28.01.2002 has been executed by the defendants regarding the properties related to Survey No.22/8 in favour of V.P.Radhakrishnan, the defendants and the plaintiffs mutually decided to execute a new sale agreement regarding the suit properties. Accordingly, the defendants and



C.R.P.Nos.2191 to 2193 of 2020
and C.M.P.No.13832 of 2020

WEB COPY

the plaintiffs entered into a new sale agreement dated 06.02.2011 regarding the suit properties and even though the entire sale amount has been already paid by the plaintiffs to the defendants, it was agreed by both parties that since the market value is increased, fresh sale amount has been fixed as Rs.1,00,000/- (One Lakh only) and in that, the amount already paid at the rate of Rs.19,750/- per cent (ஒரு செண்ட்டுக்கு) i.e., Rs.31,812/- for the suit properties i.e., for 702 ¼ sq.ft has been accounted as advance and the defendants have received a sum of Rs.18,188/- as further advance from the plaintiffs on 06.02.2011 and hence totally the defendants received a sum of Rs.50,000/- (Fifty Thousand only) from the plaintiffs as advance and agreed to execute a Sale Deed in favour of plaintiffs within 3 months by receiving the balance sale price and as per the terms and conditions made in the said sale agreement.”

7. The learned trial Judge in her orders had observed as follows:-

"6. On perusal of case records, it is clear that, petitioners has produced the original sale agreement dated 12.02.1998 into the court, only at the instance of memo filed by respondent herein and same is not yet marked as exhibit. As pointed out by respondents in their counter statement it is true that original sale agreement dated 12.02.1998 was filed in the court on 16.07.2014 itself. The above suit for specific performance was filed on the basis of Ex.A1 sale agreement dated 06.02.2011,



C.R.P.Nos.2191 to 2193 of 2020
and C.M.P.No.13832 of 2020

WEB COPY

which is marked as Ex.A1 through the 1st petitioner. On perusal of Ex.A1 it is found that said sale agreement was entered between the parties based on sale agreement dated 12.02.1998 and payments made thereon and subsequent dates. If further shows that there was no payment was made on 06.02.2011. In the said circumstances, it is no doubt that sale agreement dated 12.02.1998 is essential document for plaintiffs to prove the earlier agreement and payment made thereon. It is clear that if the said document was marked as exhibit, respondents are given opportunity to cross examine PW1 to disprove the same. Further petitioners are also come forward to produce and mark related documents, but respondent opposed the same also as sale agreement dated 05.07.2005 was already marked as Ex.B8. On perusal of Ex.B8 the said document is certified copy marked in the cross examination of PW1, now petitioners come forward to mark the original sale agreement dated 05.07.2005. Respondents also opposed to mark the receipt as it does not bears date. It is clear that truthfulness of the said document has to be tested only through evidence of PW1 and same cannot be done in this petition.

7. It is admittedly true that the above suit is filed in the year 2011 itself for declaration and specific performance based on Ex.A1 sale agreement dated 06.02.2011. Now the suit is posted for arguments after closing evidence of both parties. At this



C.R.P.Nos.2191 to 2193 of 2020
and C.M.P.No.13832 of 2020

WEB COPY

juncture, petitioner has come forward to reopen the plaintiff side evidence and to recall PW1 and receive additional document. On perusal of Ex.A1 sale agreement itself shows that, Ex.A1 came to be executed only based on the payment made on sale agreement dated 12.02.1998. In the respondents/defendants side the above suit is contested as such payment was not made either through sale agreement dated 12.02.1998 or through Ex.A1. In the said circumstances this court comes to the concrete conclusion that delay alone is not a reason to reject the claim of petitioners/plaintiffs to reopen the case to mark the said documents, since the said documents are necessary and essential documents to ascertain the real matter in dispute between the parties. Any how the above suit is filed for the relief of declaration and specific performance and same has to be decided on merits and this court is of the opinion that one more opportunity has to be afforded to petitioners to prove their case by producing all the available documents in their side, in order to reach finality in the case and to give full stop to the dispute among the parties and no prejudice will be caused to respondents if this application is allowed. From the light of above discussion and in the interest of justice this court is inclined to allow the application to reopen the case for further examination of PW1 on certain stringent condition considering the delay caused by petitioners in approaching the court."



*C.R.P.Nos.2191 to 2193 of 2020
and C.M.P.No.13832 of 2020*

WEB COPY

8. It is seen that the present petitions were filed after the closure of evidence on both sides. However, an opportunity can be given to the plaintiffs to mark the earlier sale agreement dated 12.02.1998 because it is his specific averment that on the basis of the said sale agreement, sale receipt was also issued and they were also put in possession on 28.01.2002. It is also his contention that the suit sale agreement dated 06.02.2011 also came to be executed based on the sale agreement dated 28.01.2002. In the circumstances, it is an important document without which a decision cannot be arrived at. As regards the documents sought to be filed in I.A.No.3 of 2020, there is a reference about another sale agreement dated 05.07.2005 and General Power of Attorney deed dated 28.01.2002 in the plaint. In fact, a copy of sale agreement in favour of the first plaintiff dated 05.07.2005 was already marked as Ex.B8 on the side of the defendants and the plaintiffs now want to mark the original sale agreement. However, the defendants are at liberty to raise their objections at the time of marking documents mentioned in I.A.No.3 of 2020. Since I do not find any infirmity in the orders passed by the trial Court, all the Civil Revision Petitions stand dismissed. Since the suit is of the year 2011, the learned Trial Court Judge is directed to post the matter on day-to-day basis and dispose of the same as expeditiously as possible. No costs. Consequently, connected Civil



*C.R.P.Nos.2191 to 2193 of 2020
and C.M.P.No.13832 of 2020*

Miscellaneous Petition is closed.

03.11.2022

kmi

To

1.The Subordinate Judge,
Thiruchengode.

2.The Section Officer,
VR Section,
High Court, Madras.



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*C.R.P.Nos.2191 to 2193 of 2020
and C.M.P.No.13832 of 2020*

R. HEMALATHA, J.
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C.R.P.Nos.2191 to 2193 of 2020
and C.M.P.No.13832 of 2020

03.11.2022