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C.R.P.No.2295 of 2020
and C.M.P.No.14379 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2022

CORAM:

THE HONOURABLE **MRS.JUSTICE R. HEMALATHA**

C.R.P.No.2295 of 2020
and
C.M.P.No.14379 of 2020

A.Paul Gobi

... Petitioner

..Vs..

1.R.Ilavarasi

2.K.Jayalakshmi Ammal

3.N.Ilarnisha

4.K.Suresh

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal orders dated 03.08.2020 in I.A.No.45 of 2020 in O.S.No.549 of 2019 on the file of the I Additional Subordinate Court, Villupuram.

For Petitioner : Mr.C.Prabakaran

For R1 : Mr.M.Nandhakumar
for M/s.Eswar Kumar & Rao

For RR2 to 4 : Mr.K.Mahalingam



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C.R.P.No.2295 of 2020
and C.M.P.No.14379 of 2020

ORDER

The present Civil Revision Petition is filed against the fair and decreetal orders dated 03.08.2020 in I.A.No.45 of 2020 in O.S.No.549 of 2019 on the file of the I Additional Subordinate Court, Villupuram.

2.The revision petitioner is the defendant in O.S.No.549of 2019 on the file of I Additional Sub Court, Villupuram. The first respondent/plaintiff filed the suit for redemption of mortgage.

3.The case of the first respondent/plaintiff is that he obtained a loan of Rs.50,000/- and executed a registered mortgage deed on 12.05.2010 in favour of the defendant agreeing to repay the principal amount together with interest at the rate of 12% per annum. The contention of the plaintiff in the plaint is that when he approached the defendant and tendered the principal amount with interest he did not receive the same and therefore, he filed the suit for redemption of mortgage.

4. The revision petitioner/defendant filed his written statement



C.R.P.No.2295 of 2020
and C.M.P.No.14379 of 2020

contending that the plaintiff executed a power of attorney in favour of one K.Jayalakshmi Ammal (proposed party no.1) who in turn sold the mortgage property in favour of N.Ilarnisha (proposed party no.2) K.Suresh (proposed party no.3). According to the defendant all these parties are proper and necessary parties in the present suit and the suit is bad for non-joinder of necessary parties.

5.He also filed a petition in I.A.No.45 of 2020 in O.S.No.549 of 2019 under Order I Rule 10 CPC to implead all the above mentioned parties as defendants 2 to 4 in the suit in O.S.No.549 of 2019. The respondent/plaintiff filed a counter and after full contest, the learned I Additional Subordinate Judge, Villupuram, dismissed the said application vide orders dated 03.08.2020, aggrieved over which the present Civil Revision Petition is filed.

6.Heard Mr.C.Prabakaran, learned counsel appearing for the revision petitioner, Mr.M.Nandhakumar, learned counsel for the first respondent and Mr.K.Mahalingam, learned counsel appearing for the respondents 2 to 4.



C.R.P.No.2295 of 2020
and C.M.P.No.14379 of 2020

WEB COPY

7. Mr.C.Prabakaran, learned counsel for the revision petitioner contended that even without paying the mortgage amount due to the defendant, the plaintiff sold the property in favour of the proposed parties 2 & 3 through his power agent (proposed party no.1) and also drew the attention of this Court to the written statement filed by the defendant wherein it is averred that though the mortgage deed mentions the consideration as Rs.50,000/- the defendant actually lent a sum of Rs.28,00,000/- to the plaintiff. The counsel would therefore contend that unless subsequent purchasers are made parties to the suit, much prejudice would be caused to the defendant.

8.Per contra Mr.M.Nandhakumar, learned counsel for the respondent / plaintiff contended that the plaintiff borrowed only a sum of Rs.50,000/- as mentioned in the registered mortgage deed dated 12.05.2010 and the contention of the defendant that she lent a sum of Rs.28,00,000/- is false. His further contention is that the proposed parties are not proper and necessary parties to the suit, since the matter in issue involved in the suit is whether the plaintiff is entitled for the redemption of



C.R.P.No.2295 of 2020
and C.M.P.No.14379 of 2020

WEB COPY

mortgage. It is also pointed out by him that the defendant would not be prejudiced by not impleading these parties because if the Court finds that the suit is bad for non-joinder of necessary parties, the suit would be dismissed which again would be in favour of the defendant.

9.At the outset it may be observed that the suit is for redemption of mortgage and it is admitted that the mortgage deed is registered, in which the amount borrowed by the plaintiff was mentioned as Rs.50,000/-. In the written statement the defendant had contended that he actually lent a sum of Rs.28,00,000/- to the plaintiff. It is appropriate to extract Sections 91 & 92 of the Indian Evidence Act

"91. Evidence of terms of contracts, grants and other dispositions of property reduced to form of document. — When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions herein before contained.



C.R.P.No.2295 of 2020
and C.M.P.No.14379 of 2020

WEB COPY

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved. Exception 2.— Wills 3 [admitted to probate in 4 [India]] may be proved by the probate.

Explanation 1.—This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document and to cases in which they are contained in more documents than one.

Explanation 2.— Where there are more originals than one, one original only need be proved.

Explanation 3. — The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Illustrations

(a) If a contract be contained in several letters, all the letters in which it is contained must be proved.

(b) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(c) If a bill of exchange is drawn in a set of three, one only need be proved.

(d) A contracts, in writing, with B, for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion.

Oral evidence is offered that no payment was made for the other



C.R.P.No.2295 of 2020
and C.M.P.No.14379 of 2020

indigo. The evidence is admissible.

(e) A gives B a receipt for money paid by B.

Oral evidence is offered of the payment.

The evidence is admissible.

92. Exclusion of evidence of oral agreement. — When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Proviso (1). — Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, 1 [want or failure] of consideration, or mistake in fact or law.

Proviso (2). — The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3). — The existence of any separate oral agreement, constituting a condition precedent to the attaching of any



C.R.P.No.2295 of 2020
and C.M.P.No.14379 of 2020

WEB COPY

obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4). —The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5). — Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved: Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso (6). — Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations

(a) A policy of insurance is effected on goods “in ships from Calcutta to London”. The goods are shipped in a particular ship which is lost. The fact that particular ship was orally excepted from the policy cannot be proved.

(b) A agrees absolutely in writing to pay B Rs. 1,000 on the first March 1873. The fact that, at the same time an oral agreement was made that the money should not be paid till the thirty-first March cannot be proved.

(c) An estate called “the Rampore tea estate” is sold by a deed



C.R.P.No.2295 of 2020
and C.M.P.No.14379 of 2020

which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed cannot be proved.

(d) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

(e) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(f) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(g) A sells B a horse and verbally warrants him sound. A gives B a paper in these words: "Bought of A a horse of Rs. 500". B may prove the verbal warranty.

(h) A hires lodgings of B, and gives B a card on which is written —"Rooms, Rs. 200 a month." A may prove a verbal agreement that these terms were to include partial board. A hires lodgings of B for a year, and a regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A may not prove that board was included in the term verbally.



C.R.P.No.2295 of 2020
and C.M.P.No.14379 of 2020

WEB COPY

(i) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount, A may prove this.

(j) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered."

Thus the defendant cannot contend anything which would vary the terms of contract.

10. In any event, the plaintiff has filed the suit against the defendant for redemption of mortgage and the purchasers of the property from the plaintiff are not necessary and proper parties to the suit. This is more so, because no relief is sought for against the proposed parties and there is no cause of action as against them. It is also pertinent to point out that the plaintiff is the dominus litis and he cannot be compelled to include certain parties in his suit and in fact the learned I Additional Subordinate Judge, Villupuram has analysed all these aspects in his orders dated 03.08.2020. I do not find any infirmity in the orders passed by the trial Court Judge. Since the suit is of the year 2019, the trial Court is directed to dispose of the suit as expeditiously as possible.



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C.R.P.No.2295 of 2020
and C.M.P.No.14379 of 2020

11.With the above directions, the Civil Revision Petition is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

02.11.2022

mtl
Index : Yes/No
Speaking / Non-speaking order

R. HEMALATHA, J.
mtl



WEB COPY



C.R.P.No.2295 of 2020
and C.M.P.No.14379 of 2020

To

- 1.The I Additional Subordinate Court, Villupuram.
- 2.The Section Officer, VR Section, High Court, Madras.

C.R.P.No.2295 of 2020
and C.M.P.No.14379 of 2020

02.11.2022