



C.R.P.Nos.147 & 148 of 2020
and C.M.P.Nos.816 & 820 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2022

CORAM:

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

C.R.P.Nos.147 & 148 of 2020
and
C.M.P.Nos.816 & 820 of 2020

Tmt.Subadhramma ... Petitioner in both CRPs
..Vs..

C.P.Chenneerappa ... Respondent in both CRPs

Common Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and decreetal orders dated 03.09.2019 in I.A.Nos.1 & 2 of 2019 in O.S.No.249 of 2013 on the file of the Additional Sub Court, Hosur.

In CRP.No.147 of 2020

For Petitioner : Mr.J.Pradeep
For Respondent : Mr.R.Jayaprakash

In CRP.No.148 of 2020

For Petitioner : Mr.J.Pradeep
For Respondent : No appearance



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COMMON ORDER

The present Civil Revision Petitions are filed against the fair and decreetal orders dated 03.09.2019 in I.A.Nos.1 & 2 of 2019 in O.S.No.249 of 2013 on the file of the Additional Sub Court, Hosur.

2.The revision petitioner is the plaintiff in O.S.No.249 of 2017 on the file of Additional Sub Court, Hosur. She filed the suit for recovery of advance amount of Rs.5,51,665/- paid by her to the defendant together with interest as per the agreement of sale dated 12.07.2013.

3.The respondent/defendant filed his written statement denying his signature on the agreement of sale dated 12.07.2013 and after settlement of issues, both the parties went for trial.

4.The plaintiff examined herself as PW1 and one another witness. Subsequently, the revision petitioner/plaintiff filed two applications in IA.Nos.1 & 2 of 2019 to re-open the evidence of PW1 and to recall him for the purpose of marking a proforma presented before the Lok Adalath, Hosur on 03.01.2018. It is relevant to point out that during



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the pendency of the suit and prior to examination of PW1, the case was referred to Lok Adalat and since no settlement was arrived at in the Lok Adalat the suit in O.S.No.249 of 2017 was remitted back to the trial Court.

5.The respondent/defendant filed his counter in I.A.Nos.1 & 2 of 2019 contending that the photocopy of proforma presented before the Lok Adalat without the signature of the presiding officer and other members cannot be admitted as an evidence in the suit.

6.The learned Subordinate Judge, Hosur, dismissed both the applications on the following grounds :

- 1) The petition to re-open the evidence of PW1 and to recall him were filed only to protract the proceedings.
- 2) The petitioner/plaintiff cannot be permitted to fill up lacuna in the evidence.

The decision in *Matha Prasad S.V. Vs. Renuka Devi (DB)* reported in 2014 (6) CTC 670 was also relied upon by the trial Court Judge to arrive at the above conclusions.



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7. Aggrieved over the orders passed by the trial Court, the present Civil Revision Petition is filed.

8. Heard Mr.J.Pradeep, learned counsel appearing for the revision petitioner in both CRPs, Mr.R.Jayaprakash, learned counsel appearing for the respondent in CRP.No.147 of 2020. No appearance for the respondent in CRP.No.148 of 2020.

9. Mr.J.Pradeep, learned counsel for the revision petitioner contended that the trial Court had concluded that these petitions were filed only to protract the proceedings and to fill up the lacuna in the case of the plaintiff when in fact it is not. It is his contention that even in the counter filed by the respondent/defendant, the signature of the defendant in the Lok Adalat form was not disputed. In such circumstances, the plaintiff ought to have been given opportunity to put forth his contentions by adducing the said document.

10. Per contra learned counsel for the respondent contended that this form was available with the revision petitioner/plaintiff even before his



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examination as PW1 and that when the defendant, had specifically denied his signature on the sale agreement dated 12.07.2013 the plaintiff cannot be permitted to file the present document after a lapse of six months and the same would amount to permitting the plaintiff to fill up the lacuna. He relied on the decision in *S.Ramasamy Vs Perumal & Ors.* reported in 2014 (3) CTC 518, and contended that revision petitioner/plaintiff did not give any details as to why the relevant document was not adduced before the examination of PW1. He drew the attention of this Court to the proof affidavit filed by PW1, wherein there is no reference about the document which is now sought to be marked. He also relied on the decision in *Matha Prasad S.V. Vs. Renuka Devi (DB)* reported in 2014 (6) CTC 670 wherein it has been held thus :

11. We have given a thought to the matter and are of the view that the Appeals are meritless. If the legal principles enunciated by the Hon'ble Supreme Court in the aforesaid Judgments are applied to the facts of the present case, it would be quite apparent that despite repeated opportunities, the Counsel for the Appellant/Second Defendant never cross-examined any of the Witnesses of the First Respondent/Plaintiff. The Appellant/Second Defendant, thus, had adequate opportunity, but to no avail. The Counsel for



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Respondent No. 1/Plaintiff was well within his right to confront the Appellant as DW2 with documents, which were within his knowledge and thus, proved those documents in cross-examination. The Appellant/Second Defendant cannot be said to have been taken by surprise on being confronted with those documents.

12. The First Respondent/Plaintiff, did seek further cross-examination and one more document was produced in that process. Whether such permission ought to have been granted or not is a issue no more open, as the exercise of discretion by the learned Single Judge was upheld even by the Division Bench. We, however, fail to appreciate the plea of parity on this account, i.e., because the First Respondent/Plaintiff was permitted to further cross-examination of the Appellant/Second Defendant, in which process, one more document was exhibited, the Appellant/Second Defendant should be given an opportunity to cross-examine the First Respondent/Plaintiff as PW1 qua all the documents produced by the First Respondent/Plaintiff during the cross-examination of the Appellant/Second Defendant. Each party has to prove his own case or leads his own defence. As observed by the Hon'ble Supreme Court in the aforesaid two Judgments of K.K. Velusamy v. N. Palanisamy, 2011 (3) CTC 422 (SC);



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and Bagai Construction thr. its Proprietor v. Gupta Building, Material Store, 2013 (1) MWN (Civil) 573 (SC), supra, the objective cannot be to fill in the lacunae and gaps in the evidence, by this exercise. It is not a case where the Court has felt handicapped and needs any elucidation. These documents pertain to the Appellant/Second Defendant. They are matters of legal proceedings. The Appellant/Second Defendant has not been caught by surprise. Thus, the Appellant/Second Defendant, at this stage, cannot be permitted to cross-examine the First Respondent/Plaintiff as PW1. It is on completion of trial that belatedly the prayer was made by the Appellant/Second Defendant. It is at a stage where even the evidence of the Defendants is over and in fact, the Applications were filed post adjournment of the Suit for final hearing on a date agreed to by the Counsel for the parties."

The present Civil Revision Petition are liable to be dismissed.

11. At the outset, it may be observed that the suit is filed for recovery of advance amount mentioned in the agreement of sale dated 12.07.2013 and the plaintiff did not seek for the relief of specific performance of contract. The defendant has denied his signature on the sale agreement dated 12.07.2013. As already observed, the matter was referred



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to Lok Adalat and it is the contention of the plaintiff that a settlement was arrived at between the parties they filed up a proforma along with a memo of compromise duly signed by them and their respective counsels for presenting the same before the Lok Adalat. Unfortunately since the presiding officer and members were not present, the matter could not be settled in the Lok Adalat.

12.At this juncture, it is appropriate to extract the contention of the respondent in the counter affidavit dated 08.08.2019

"4.About the claim of the filing a xerox copy of unfinished Lok Adalat alleged paper, cannot be a document, as it was not granted by the Judge and members of Lok Adalat no seal on it, so it is an unauthorized xerox copy of the said form. In fact the settlement version are typed by the plaintiff and obtained signatures, but as the defendant was not admitted for the said settlement, it was not recorded by Judges, so it is notate a document to be filed."

Thus his signature on the memo of compromise and the proforma was not disputed.



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13.The counsel for the revision petitioner produced original form with memo of compromise duly signed by both the parties, before this Court. He would further contend that the plaintiff would be marking only the original forms and memo of compromise filed before the Lok Adalat. No doubt it is true that the said document is sought to be marked after the examination of PW2. However the mere delay in filing the document cannot be a ground to reject the same in *toto*. The defendant can cross examine the plaintiff with regard to the said documents. Moreover, in the instant case, the suit was referred to Lok Adalat only subsequent to the filing of the suit. In the circumstances, the orders passed by the trial Court Judge in I.A.Nos.1 & 2 of 2019 are set aside and Civil Revision Petitions are allowed. Since the suit is of the year 2013, the trial Court is directed to dispose of the same as expeditiously as possible.



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14. With the above observations, the Civil Revision Petitions are allowed. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.

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

R. HEMALATHA, J.



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To

- 1.The Additional Sub Court, Hosur.
- 2.The Section Officer, VR Section, High Court, Madras.

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