



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P. (MD)No.120 of 2018

and

C.R.P (MD) .No.528 of 2018

S.Pugalenthir

... Petitioner/2nd Respondent/
Defendant No.2

-vs-

1.V.Subramanian

2.S.Balasubramanian

3.S.Seetharaman

...Respondents 1 to 3/Petitioners/
Plaintiff

4.K.Ashok Kumar

...4th Respondent/Respondent No.2/
Defendant No.1

Prayer :- Petition filed under Section 227 of Constitution of India, to set aside the fair and decretal order passed by the Court of the Fast Track Mahila Court, Karur in I.A.No.131 of 2017 in O.S.No.16 of 2017 on 27.10.2017 and allow this Civil Revision Petition.

For Petitioners : Mr.M.Jothibasur

For Respondents : No Appearance

ORDER

The Revision Petitioner is the second defendant in a suit for specific performance. At the time of filing the plaint, the plaintiff had contended that the suit sale agreement dated 18.06.2012 is a registered document.

2. After framing of issues, on the side of plaintiff, two witnesses were examined as P.W.1 and P.W.2. The second defendant has also filed a proof affidavit. Thereafter, the plaintiff has filed I.A.No.131 of 2017 under Order-6 Rule 17 and Section 151 of the Civil Procedure Code, to amend the plaint to the effect that the sale agreement is an unregistered one and the plaintiff wanted to substitute the word as 'unregistered documents' in all the place where it is mentioned as 'registered document'. The said application was strongly opposed by the defendants. After contest, the application was allowed. Challenging the same, the present Revision petition has been filed.

3. Heard the learned counsel for the petitioner. Though the Court notice served on the respondents, they have chosen not to appear before this Court.



4. The learned counsel for the petitioner submits that in so many paragraphs in the plaint, the plaintiffs have specifically contended that the suit sale agreement is a registered document. The learned counsel for the petitioner also drew my attention to the averments in the written statement, where it is mentioned that the alleged sale agreement is not a registered document. The learned counsel for the petitioner also drew my attention to the deposition of P.W.1 and P.W.2, where in the chief examination they have deposed that the suit sale agreement is a registered document. Only after the defendant has filed proof affidavit, the plaintiffs have chosen to file this petition for amendment of plaint. The learned counsel for the petitioner had contended that this amendment of plaint was filed after trial has stated. The plaintiffs have not exercised due diligence before filing the application. The learned counsel for the petitioner further contended that no satisfactory or convincing reason has been offered by the plaintiffs for seeking amendment of the plaint. He further contended that the word "Registered" could not have been typographical error and the said word appears in many places. The plaintiffs have included the list of documents. In fact the plaintiffs have confirmed that the said document is a registered document during the deposition. Hence this cannot be considered to the typographical error as contended in the affidavit filed in support of the I.A.No.131 of 2017.

5. Though the suit sale agreement is claimed to be a registered document, in the plaint as well as in the deposition of P.W.1 and P.W.2, the fact remains that it is unregistered sale agreement. Amendment is only to support the case of the defendant. That apart of the substitution of the word 'unregistered' in the place of 'registered' would not change the cause of action of the suit. Though the plaintiff ought to have been vigilant in referring to the nature of the document in the plaint, that cannot be put against the plaintiff. Hence, I do not find any illegality or infirmity in the order passed in I.A.No.131 of 2017 in O.S.No.16 of 2017 dated 27.10.2017 on the file of the Fast Track Mahila Court, Karur. Accordingly, this Civil Revision petition is dismissed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

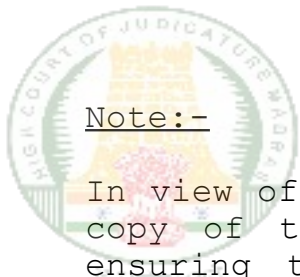
Assistant Registrar (CS-II)

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/ /2022

Sub Assistant Registrar(CS)

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Note:-

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

1.The Judge,
Fast Track Mahila Court, Karur.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.G.M.LAW ASSOCAITES, Advocate (SR-21080
[F] dated 26/04/2022)

C.R.P.(MD)No.120 of 2018

Dated: 25.04.2022

RK(14/06/2022) 3P 5C