



A.No.188 of 2023
in C.S.No.516 of 2011

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R.N.MANJULA,J.

The applicants who are the defendants have filed this application, seeking to reject the plaint in C.S.No.516 of 2011. The plaintiffs have filed the suit for specific performance.

2. The learned counsel for the applicants/defendants submitted that the sale agreement dated 19.02.2011 is an unregistered one and hence it cannot be accepted as evidence and that the suit should be rejected as not maintainable. The original sale agreement, dated 19.02.2011 has also not been produced and on that score also the suit is liable to be rejected.

3. The learned counsel for the respondents/plaintiffs have submitted that the application has been filed just to protract the proceedings in which the trial has been commenced as early as in the year 2016. The applicants themselves have agreed about the execution of the agreement of sale. The sale agreement was executed in the year 2011 and at that point of time, it is not mandatory that the sale agreement should be registered. The defendants refused to mark the sale agreement though it is also listed as one of the defendants' list of documents and they also refused to furnish the original which is in their



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custody. The respondents/plaintiffs have filed an application in A.No.4888 of 2019, seeking direction to the defendants to produce the original sale agreement, which is in their custody and the same was dismissed. Hence the plaintiffs were forced to mark the copy of the sale agreement as secondary evidence. The defendants have filed the application in A.No.1417 of 2022 for eschewing the evidence and the said application was also dismissed with an observation that the document has already been marked before the Master Court and its admissibility can be decided only at the final stage. The applicants after having filed the written statement and participated in trial, have chosen to file this application to reject the plaint belatedly. According to the respondents/plaintiffs, it is only a delay making tactics on the part of the defendants in filing this petition and hence it should be dismissed.

4. It is needless to state that proviso to section 49 of the Registration Act does not forfeit the receiving of an unregistered sale agreement as evidence in a suit for specific performance. The said provision has already been settled in the Judgment of the Hon'ble Supreme Court in ***S.Kaladevi Vrs. V.R.Somasundaram and ors.*** reported in ***(2010) 5 Supreme Court Cases 401.*** It is the contention of the applicants/defendants that the respondents have produced only photo copy of the agreement. In contra, the respondents /



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plaintiffs have stated that the original sale agreement is in the custody of the applicants. The plaintiffs had moved an application in A.No.4888 of 2019 for directing the defendant to produce the original sale agreement. Since the defendant did not produce the original sale agreement, the plaintiffs were forced to produce the secondary evidence before the Court. In fact, the very same applicants have filed A.No.1417 of 2022 for eschewing evidence by stating the same reasons of marking the copy of the sale agreement. The said petition was also dismissed with an observation that those matters can be dealt at the time of considering the evidence after trial. The said order was not challenged by the applicants. Nor with the very same averments, the present application has been filed but with a different prayer for rejection of plaint. Since the parties have participated in the trial and the suit is in the midway of recording of evidence, the intention of the applicants / defendants can be seen as only a dilatory tactics to delay the proceedings.

5. In view of the reasons stated above, this application is dismissed.

16.03.2023

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