



C.R.P.(MD)No.42 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :08.02.2023

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).No.42 of 2023

and

C.M.P.(MD).No.240 of 2023

T.Muthusamy

... Petitioner

Vs.

1.K.Ramasamy

2.K.Dhanabal

... Respondents

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, pleaded to set aside the Fair and Decreetal Order dated 13.01.2020 made in I.A.No.425 of 2016 in O.S.No.232 of 2013 on the file of the Additional District Munsif Court, Lalgudi.

For Petitioner :Mr.S.I.Muthian

For Respondents :No appearance



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ORDER

The plaintiff is the revision petitioner. The plaintiff had filed O.S.No.232 of 2013 on the file of the Additional District Munsif Court, Lalgudi, for the relief of specific performance of an agreement dated 20.08.2001.

2.In paragraph No.5 of the plaint, the plaintiff had specifically pleaded that the original sale agreement is retained by the defendants and the plaintiff was furnished only with a Xerox copy. A perusal of paragraph 5 of the written statement filed by the defendants indicate that the defendants admit the execution of the sale agreement and the contents of the sale agreement. However, there is no specific denial about having the original sale agreement with them. The only defence that was raised by the defendants is that the advance amount was refunded to the plaintiff and the suit is barred by limitation.

3.After the closure of plaintiff side evidence, the plaintiff had filed I.A.No.425 of 2016, under Order XI Rule 14, to direct the defendants to



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produce the original sale agreement, which is said to be in their possession. The defendants have filed a counter contending that the originals are not available with them and hence, the question of producing the said documents does not arise. The learned Trial Judge, after considering the contentions of both the parties, had arrived at a finding that the attestors of the said sale agreement have not been examined and the defendants have specifically denied about the custody of the original sale agreement with them. Based upon the said finding, the application was dismissed on 13.01.2020.

4.The second defendant was examined as D.W.1 on 05.09.2022. While he was cross examined, at one place, he had deposed that the original sale agreement is only with the plaintiff and in another place, he had deposed that there was a panchayat, relating to the sale agreement, in which, the entire advance amount was refunded to the plaintiff and the document was destroyed. However, he is not in custody of the damaged sale agreement. Relying upon the said contradictory deposition, the learned counsel appearing for the revision petitioner had contended that after passing of the order in I.A.No.425 of 2016, the second defendant



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had deposed that the sale agreement has been destroyed. Hence, the learned counsel for the plaintiff prayed that he may be permitted to invoke Section 65 of the Indian Evidence Act.

5.For invoking Section 65 of the Indian Evidence Act, either the plaintiff has to prove that the original is in the custody of the other side or the original of the document has already been lost or destroyed, as contemplated Section 65 (a) and (c) of the Indian Evidence Act.

6.Considering the fact that the suit is in the argument stage, this Court cannot grant much time to the plaintiff to mark the sale agreement. Though the respondents have been served, neither he had appeared in person nor engaged a counsel.

7.In view of the above said facts and the deposition of D.W.1, dated 05.09.2022, the plaintiff is at liberty to file an application under Section 65 of the Indian Evidence Act. If the plaintiff satisfies all the ingredients of Section 65 of the Indian Evidence Act, the said application shall be considered on merits and in accordance with law.



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8. With the above said liberty, this Civil Revision Petition stands disposed of. There shall be no order as to costs. Consequently, connected civil miscellaneous petition is closed.

08.02.2023

Index : Yes / No
Internet : Yes / No
Speaking Order/Non-Speaking Order

sbn

To

The Additional District Munsif Court,
Lalgudi.



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R.VIJAYAKUMAR ,J.

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