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C.R.P.(MD)No.2032 of 2019



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.11.2023

Pronounced on : 17.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE **P.B. BALAJI**

C.R.P(MD)No.2032 of 2019
and
C.M.P(MD)No.10428 of 2019

Ramamirtham

... Petitioner

Vs.

Nedumaran

... Respondent

PRAYER : Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order dated 23.07.2019 passed in I.A.No.16 of 2018 in A.S.No.71 of 2017 by Additional District Court (Fast Track Court) Kumbakom and thereby allowing the Civil Revision Petition with costs.

For Petitioner : Mr.S.Anand Chandrasekar
for M/s.Sarvabhauman Associates

For Respondent : Mr.H.Lakshmi Shankar



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ORDER

This Civil Revision Petition has been filed to set aside the order dated 23.07.2019 passed in I.A.No.16 of 2018 in A.S.No.71 of 2017 by Additional District Court (Fast Track Court) Kumbakom.

2. The appellant in A.S.No.71 of 2017 is the revision petitioner. The appellant took out an application in I.A.No.16 of 2018, seeking to appoint an advocate commissioner to submit Ex.A1 - sale agreement to the handwriting / finger print expert, to verify the truth, validity and genuineness of said Ex.A1-sale agreement. The said application was resisted by the respondent / plaintiff and the appellate Court dismissed the said application by an order dated 23.07.2019, holding that the request of the revision petitioner was in the nature of producing additional evidence and therefore, Order 41 Rule 27 of C.P.C., would come into play and the appellant had failed to establish the ingredients necessary to satisfy the said Rule.

3. Aggrieved by the dismissal of the said application, the appellant who is the revision petitioner herein, challenges the impugned order on the grounds that the application was not in any way related to Order 41



Rule 27 of CPC and being the last Court of facts, the application ought to have been considered liberally as valuable property rights of the appellant were involved and his defence would be lost otherwise.

4. Heard Mr. S.Anand Chandrasekar, learned counsel appearing for the petitioner and Mr.H.Lakshmi Shankar, learned counsel appearing for the respondent.

5. Learned counsel for the petitioner would submit that the suit was originally filed by the respondent for specific performance of an agreement of sale dated 05.06.2015. The execution of the said agreement was denied by the revision petitioner even in the written statement. However, despite the said stand taken by her, considering the oral and documentary evidences adduced by the parties, the trial Court decreed the suit. As against the said decree, the appeal in A.S.No.71 of 2017 has been preferred by the revision petitioner and the same is pending. He has primarily challenged the impugned order passed by the appellate Court on the grounds that the appellate Court treated the application to send Ex.A1-Sale agreement to the handwriting / fingerprint expert, as one being under Order 41 Rule 27 of C.P.C, which is totally erroneous. He would also state that the appellant is aged about 85 years and she was



illiterate and therefore, a fair opportunity ought to be granted to permit her to disprove the genuineness of Ex.A1-Sale agreement. He would therefore, pray for the revision being allowed.

6. Per contra, Mr.H.Lakshmi Shankar, learned counsel appearing for the respondent would invite the attention of this Court to the written statement filed by the revision petitioner before the trial Court, wherein in Paragraph No.6, the revision petitioner has stated as follows:

"The plaintiff has not approached the Court with clean hands and the plaintiff has to be thrown out. The plaintiff has played a fraud on registration and judicial proceedings and therefore, in view of fraud vitiates all, and it should be unearthed at the root itself, and as per the dictum of Supreme Court, the plaintiff is liable to be thrown out at any stage of the proceedings and therefore, in the interest of Justice, plaint may be rejected. The relief being equitable in nature and in view of Sale deeds itself is a forged one, the plaintiff should not be granted with any relief in the above suit. Even passing of consideration mentioned in the created sale deed is denied in full. This defendants denies the left hand thumb impression in the alleged created sale deed. It is not of this defendant. Therefore, the same may be sent to



Signature and Handwriting Experts in the interest of Justice and for taking effective serious criminal action against the erring plaintiff."

7. Learned counsel for the respondent would state that the revision petitioner cannot seek any indulgence on the ground that she was aged or illiterate, when her specific case in the written statement was that the sale agreement was forged and that the left thumb impression in the sale agreement was not hers and that the same would be sent to the signature and handwriting expert in the interest of justice and also for taking serious criminal action against the plaintiff. The revision petitioner was therefore fully aware of her case. At the time of filing of the written statement, in fact, despite contending in the written statement that the agreement of sale had to be sent for signature and handwriting expert, the revision petitioner never took any steps during the pendency of the suit and at the same time, the revision petitioner participated in the trial. After suffering a decree, pending the appeal, the revision petitioner has come up with an application pleading illiteracy, old age and also an opportunity to have the suit sale agreement disproved. The first appellate Court has relied on Order 41 Rule 27 of CPC to non-suit the revision petitioner and that the same is challenged by the revision petitioner on



the ground that the application was only seeking to send the sale agreement to be verified by a handwriting / fingerprint expert and it cannot be treated akin to an application under Order 41 Rule 27 of CPC to produce additional evidence.

8. However, as rightly pointed out by the learned counsel for the respondent, Order 41 Rule 27(1)(a) of CPC would be relevant. The application for producing additional evidence, whether oral or documentary in the appellate stage, can be permitted only when the Court from whom the decree has been appealed again, has been refused to admit the evidence, which ought to have been admitted or when the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or her knowledge and going to produce the same before the trial Court.

9. Though the application is only seeking to send the sale agreement Ex.A1 for ascertaining its genuineness on the ground that the thumb impression of the revision petitioner affixed in the sale document is not hers, the very nature of the application would certainly amount to production of evidence before the Court. It is not the case of the revision



petitioner that she attempted to take out this application before the trial Court and that the same was refused. It is also not the case of the revision petitioner that this plea was not available to her during the pendency of the suit and that she therefore could not have made the application before the trial Court.

10. As already seen from the stand taken by the revision petitioner in her written statement, the revision petitioner had full knowledge of the course open to her to have Ex.A1 disproved. Unfortunately, despite a specific statement made in the written statement, she did not choose to take any steps whatsoever to have the agreement in Ex.A1, sent for verifying its genuineness with regard to the thumb impression in the documents. After suffering a decree, it is not open to the revision petitioner to contend that she should be given a fair opportunity to disprove the document. The revision petitioner clearly missed the bus before the trial Court and cannot be allowed to fill up the lacuna by taking out an application of this nature in the appeal. I do not find any infirmity in the findings of the first appellate Court, rejecting the application / request made by the revision petitioner.



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11. In fine, this Civil Revision Petition is dismissed. There shall be no orders as to costs. Consequently, connected miscellaneous petition stands closed.

17.11.2023

NCC : Yes / No
Index : Yes/No
Internet : Yes/No

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To

The Additional District Court (Fast Track Court) Kumbakom.



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P.B. BALAJI, J.

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Pre Delivery Order made in
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17 .11.2023