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CRP No.1144 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2024

CORAM:

THE HONOURABLE Mr. JUSTICE V.LAKSHMI NARAYANAN

CRP No.1144 of 2024 and CMP No.5910 of 2024

N.Natarajan

... Petitioner

Vs

1.Lavakumar
2.Jothimani @ Jothi
3.Kayalvizhi
4.Kavipriya
5.Selvam
6.Mani

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 14.12.2023 passed in I.A.No.13 of 2023 in O.S.No.41 of 2011 by the learned Principal District Judge, Dharmapuri.

For Petitioner : Mr.Dr.S.S.Swaminathan

For Respondents : Mr.S.Sudarshan

For Mr.S.Subramanian

For R.1

R.2 to R.6 – No appearance



CRP No.1144 of 2024

WEB COPY

ORDER

This Civil Revision Petition arises against the order of the learned Principal District Judge, Dharmapuri in I.A.No.13 of 2023 in O.S.No.41 of 2011 dated 14.12.2023.

2. O.S.No.41 of 2011 is a suit for Specific Performance of an agreement of sale dated 05.10.2010. The case of the plaintiff is that the defendants 1 to 3, who are the original owners of the suit property, executed a Power of attorney in favour of the defendants 4 and 5. The said defendants entered into an agreement with the plaintiff. As the demand of the plaintiff remained unsatisfied and since the sale deed was not executed, he filed suit for the aforesaid relief.

3. It is the case of the 6th defendant that the power of attorney dated 01.10.2010 executed by the defendants 1 to 3 in favour of the defendants 4 and 5 had a specific clause that the power of attorney would come into force



CRP No.1144 of 2024

WEB COPY

post 01.02.2011. Taking advantage of certain individuals working in the Sub Registrar's Office, the restricted clause stating that the power of attorney would come into force after 01.02.2011, was deleted in the original. They have taken a specific plea that a certified copy of the document dated 01.10.2010 which contains the restrictive clause, is available with them.

4. The plaintiff has entered into witness box and also deposed. Thereafter, the 6th defendant took out an application in I.A.No.13 of 2023, seeking permission to examine the Sub-Registrar regarding the power of attorney deed dated 01.10.2010, the cancellation of power of attorney deed dated 02.12.2010 and two sale deeds dated 10.12.2010 and rectification thereon dated 17.03.2011 together with the records relating to departmental enquiry and final report regarding such documents.

5. The learned trial Judge, after receipt of the counter from the plaintiff, proceeded to dismiss the said petition. Hence, this Civil Revision Petition.



CRP No.1144 of 2024

WEB COPY

6. I have heard Dr.S.S.Swaminathan, learned counsel for the revision petitioner and Mr.S.Sudarshan, learn counsel for the first respondent.

7. Dr.S.S.Swaminathan pleads that the power of attorney deed, on the basis of which the agreement was entered into with the plaintiff, is a fabricated one. He states that the fabrication occurred in the Sub Registrar's Office with the connivance of the plaintiff and the defendants 1 o 5 as they are close relatives. Hence,the requirement to examine the Sub Registrar.

8. Per contra, Mr.S.Sudarshan, learned counsel for the first defendant invites my attention to the written statement that had been filed by the defendants 1 to 3 – original owners of the property. He argues that they have categorically pleaded that they are in fact, executed power of attorney in favour of defendants 4 and 5 on 01.10.2010 and that in turn, the agents have entered into a sale agreement with the plaintiff. In addition, the defendants 1 to 3 have pleaded that the sale deed on the basis of which the 6th defendant claims was for a different property which was subsequently rectified to cover



CRP No.1144 of 2024

the suit property. Therefore, Mr.Sudarshan pleads that the order of the learned trial Judge does not require any interference and it has to be confirmed.

9. I have carefully considered the submissions made on either side and an also have gone through the records.

10. The petition, which has been rejected by the learned trial Judge, was presented under Order XVIII Rule 3 (A) of Code of Civil Procedure. Under this provision, it enables a party to a suit to examine a witness prior to examination himself. The said provision is only discretionary and not mandatory.

11. Dr.S.S.Swaminathan states that though it is a wrong provision of law, it would not affect the Court to deal with the merits of the case. He is right. Quoting of wrong provision of law would not affect disposing the petition on merits, in case the Court otherwise has jurisdiction to deal with the said application.



CRP No.1144 of 2024

WEB COPY

12. It is on record that the power of attorney and the sale agreement, on the basis of which, the suit has been filed, have already been exhibited as Exs.A.1 and A.2. The 6th defendant has also produced the cancellation deed as Ex.D.3. Therefore, the execution of the power of attorney, the cancellation deed as well as the sale agreement, which was entered into in the interregnum, are not in dispute.

13. The plea of the 6th defendant that there has been an insertion that has been made by the plaintiff acting in collusion with the defendants cannot be proved on the basis of the departmental enquiry that was conducted by the Registration Department as against its employees. It is for the civil court to independently analyse whether there is a fabrication or not. It is needless to point out that in case there is a fabrication, specific performance being a relief in equity, the plaintiff would not be able to get any relief. It is always open to the 6th defendant to substantiate that the document relied upon by the plaintiff is a fabricated document. For the said purpose, the Sub Registrar need not be summoned to the Court.



CRP No.1144 of 2024

WEB COPY

14. I am not in agreement with Dr.S.S.Swaminthan on two scores. Firstly, there is no plea as regards the alleged departmental enquiry that has been initiated by the Registration Department as against the employees in the written statement. The position is well settled, yet I have to reiterate the same that no amount of evidence can be looked into by a Court unless and until there is a plea. Secondly, the 6th defendant/civil revision petitioner has accepted in his written statement that he has certified copy of the document dated 01.10.2010. Then it is up to the 6th defendant to produce a certified copy before the trial Court to substantiate his case. He cannot rely upon the struts that would be provided by a Sub Registrar in order to defeat the case of the plaintiff. In any event, in a suit for Specific Performance, the burden is on the plaintiff to prove that the agreement on which he is relying upon is true and genuine. As the 6th defendant has denied the genuineness of the document, the burden is on the plaintiff to substantiate the same. The 6th defendant need not volunteer to carry the cross that has to be borne by the plaintiff.



WEB COPY



CRP No.1144 of 2024

V.LAKSHMINARAYANAN,J.,

SR

15. I do not find any error in the order passed by the learned Principal District Judge, Dharmapuri in I.A.No.13 of 2023 in O.S.No.41 of 2011. Hence, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

04.11.2024

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

To

The Principal District Court, Dharmapuri

CRP No.1144 of 2024