



A.No.3953 of 2024

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and C.S.No.1065 of 2024

K.KUMARESH BABU, J.

This Application has been filed to permit the applicant/ plaintiff to mark the documents in the Judge's summons as additional documents in Chief Examination of the applicant/ plaintiff in support of his proof affidavit filed on 21.06.2024 before the Additional Master-IV and pass such other and further orders.

2. Heard Mr.R.Anish Kumar, learned counsel for the applicant and Mr.S.Sethuraman, learned counsel appearing on behalf of the deceased third and fourth defendants.

3. The learned counsel for the applicant would submit that the suit had been initiated by the applicant seeking for a specific performance of an agreement for sale to substantiate the title to the property with regard to the first respondent. He would submit that the documents of partnership deed of the first respondent could also be relevant and similarly, the receipt that had been issued by the deceased second and third defendants for evidencing the receipt of the part payment for the sale agreement is also equal and necessary documents. He would submit that other three documents are the sale certificates issued in favour of the



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applicant by the fourth defendant and the order of the DRT and this Court which had rejected the claim of the deceased defendant in challenging the sale deed executed by the fourth defendant, pursuant to the sale certificates issued in favour of the applicant. He would submit that the three documents relates to the portion of the property which was the part of the agreement of sale through these documents are relevant and particularly the document No.3, 4 & 5 were documents which relates to the date after which the suit had been filed and the 1 and 2 documents were inadvertently left out while filing the suit. He would submit that there would be no prejudice caused to the respondents, if the same is allowed.

4. However, the learned counsel appearing on behalf of the respondents 1 to 3 who are the defendants 1,5 and 6 would contend that the present application taken out through a Power of Attorney itself is not maintainable as the suit for specific performance through a Power of Attorney could not be entertained. He would further submit that the sale of item 2 property by the fourth defendant in favour of the applicant itself is bad in law as there was no valid mortgage that had been created in favour of the Bank. He would further submit that there is no valid explanation made in the application for receiving the aforesaid



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filed in support of the application is bald and vague.

5. I have considered the rival submissions made by the learned counsels appearing in either side and perused the materials available on record.

6. The objections that had been raised by the respondent is that a Power of Attorney cannot represent the plaintiff in the suit for specific performance. He had vehemently relied upon the judgment of the Hon'ble Apex Court made in Civil Appeal No.7840 of 2023 dated 17.05.2024.

7. In the present case, when an application was taken out in A.No.1499 of 2024 seeking leave to the plaintiff to be represented through Power of Attorney, by order dated 26.03.2024, this Court had allowed the application. The respondent seems to have not preferred any intra court appeal against the said order and the said order had become final and therefore, the respondents cannot be heard to contend that the Power of Attorney could not represent the plaintiff. Having failed to unsuccessfully defended the said application, the respondents is now estopped from claiming otherwise.



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8. The second ground that had been raised by the learned counsel for the applicant is that the sale in respect of item 2 of the property which was not the subject matter of the mortgage by the fourth defendant is bad in law. It is to be noted that the deceased second defendant had in fact challenged the sale deed executed by the fourth defendant before the DRT which was rejected, against which a Writ Petition was also preferred and the Hon'ble Division Bench of this Court had dismissed the Writ Petition thereby upholding the sale made by the fourth defendant in prior of the plaintiff.

9. In such view of the matter, the respondent cannot reagitate the very same issue which has been again be finally decided against the respondents as they are unsuccessful in the interest of the deceased second and third defendants.

10. The third ground that was objected to was that there is no reason as to why such documents were not filled at the time of filing the suit. From a plain reading of the list of documents, it could be seen that the documents in Sl.No.3, 4 & 5 are subsequent to the suit and there is no possibility of the same been filed along with the plaint. As regards to the documents in Sl No.2, it is an admitted case, even in the written



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statement filed by the defendants 2 and 3 that there was a receipt of the amount as indicated in the said document. But a claim had been made in the written statement as if the said amount was received as a loan to discharge the liabilities with the financial institution. Hence, it had become necessary for them to produce the said documents along with the partnership which according to the applicant were originally misplaced and was not available at the time of filing the suit.

11. It is to be noted that even though the facts does not contain any detailed reasons, it is an admitted fact that the deceased second and third defendants were partners of the first defendant's firm and only to evidence the same, the partnership deed is being produced.

12. In such an event, I do not find any impediment in ordering the application as prayed for and the leave is granted to the applicant to mark the documents in Sl.No.1 to 5 of the Judge's summons by filing appropriate Additional proof affidavit.

13. In fine, this application is ordered accordingly.



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Index: Yes/ No
Speaking/ Non-Speaking order : Yes/ No
Neutral Citation : Yes/ No

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