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C.R.P.No.3747 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.3747 of 2023
and C.M.P.No.23356 of 2023

P.Nagarathinam

... Petitioner

-Vs-

A.Thomas

... Respondent

Prayer : Civil Revision Petition under Article 227 of the Constitution of India to set aside the order dated 21.08.2023 made in diary abstract of O.S.No.593 of 2022 by the VII Additional City Civil Judge, Chennai.

For Petitioner : Mr.R.J.Radhika

For Respondents : Mr.C.Iyyapparaj

ORDER

This civil revision petition arises against the order of the learned VII Additional Judge, City Civil Court, Chennai in receiving Ex.A11 on 21.08.2023 made in diary abstract of O.S.No.593 of 2022.

For the sake of convenience, the parties will be referred to as per the ranking in the original suit.



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2. O.S.No.593 of 2022 is a suit for specific performance of agreement of sale dated 02.08.2018. It is the case of the plaintiff that the defendant had agreed to sell the suit schedule mentioned property for a sum of Rs.22,80,000/-. He would plead that he had made substantial payments to the tune of nearly Rs.20 lakhs and that the balance that was liable to be paid is only Rs.2,90,000/-. As the defendant was evading the conversion of the sale agreement into the sale deed, the plaintiff came forward with the suit of specific performance. Even at the time of presentation of the plaint, the plaintiff had specifically pleaded that in terms of Clause 7 of the suit agreement, it was agreed between the parties that the original of the sale agreement will be retained by the defendant and therefore he is not in a position to produce the same before the Court.

3. On service of summons, the defendant entered appearance and took a specific stand that he had never entered into an agreement of sale with the plaintiff. He would claim the agreement is a forged and fabricated one. He would plead that in the suit property, there was one Ganapathy, a close friend of the plaintiff, who had entered into a lease agreement with the defendant. Taking advantage of the signatures of the defendant found in the lease deed, the sale agreement has been prepared for the purpose of institution of the suit. In other words, the case of the defendant is that the sale agreement is false, fabricated and cannot be relied upon for the purpose of obtaining a decree.



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4. On the basis of these pleadings, the Court proceeded with the trial. At the time of trial, Exs.A1 to A10 had already been marked. On 21.08.2023, the plaintiff was present and the suit sale agreement was received as Ex.A11. It is the case of the civil revision petitioner / defendant that his counsel had objected to the marking of the document and that is the reason why the suit agreement, which has been shown as suit document No.2, was not marked in evidence on two occasions and when he was not present, the agreement was received and marked. Aggrieved by the same, the present civil revision petition has been presented.

5. Notice had been ordered in the revision and Mr.C.Iyyapparaj has entered appearance for the respondent.

6. I heard Ms.R.J.Radhika for the petitioner and Mr.Iyyapparaj for the respondent.

7. At the outset, I should point out that unless and until a sale agreement has been received contrary to statutory provisions like Stamp Act, there is no power available for the Court to "de-mark" or "unmark" a document. It is the duty of the person opposing the receipt of the document to be vigilant and oppose the same at the time when the plaintiff or defendant attempts to mark a document. If that stage has gone by, then it is not available to the revisional Court to set aside the order receiving the document. The purpose for which the document has been



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marked can certainly be looked into by the trial Court at the time of marshalling of the evidence on the basis of the pleadings that has been filed by the parties. I am afraid, I am not in a position to allow the revision to "unmark" the document.

8. Ms.R.J.Radhika would point out that the parties have not complied with Sections 65 and 66 of the Indian Evidence Act. Under Section 65(a) Part 1 of the Indian Evidence Act, a party is entitled to exhibit a document which is secondary evidence in nature, when the original is shown or appears to be in possession or power of the person against whom the document is sought to be marked. Para 10 of the plaint is clear and categorical that the original of the said document is available with the defendant and the plaintiff is producing the photostat copy. Necessary pleadings as required under Order VII Rule 14(2) are also available. Therefore, I do not find any irregularity or illegality committed by the trial Court when the secondary evidence that has been let in by the plaintiff complies with the requirements of Order VII Rule 14(2) read with Section 65(a) Part I of the Indian Evidence Act.

9. At this stage, Ms.Radhika would point out that the documents can be received subject to relevancy and proof.

10. In a suit for specific performance, it is the duty of the plaintiff to prove that the document had in fact come into existence as alleged by him. Therefore, it



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is his duty to give appropriate proof to substantiate the same. For the mere fact that he has to give proof to substantiate the same does not mean that the document cannot be received in evidence at all. In fact, that would be putting the plaintiff into difficulty. He has pleaded about the agreement of sale dated 02.08.2018 and therefore, he has to prove the said fact.

11. In the light of the above discussion, by the mere fact that the agreement has been received does not mean the agreements stands proved. The plaintiff will still have to produce evidence to substantiate the same. The order receiving it under Ex.A11 stands confirmed with a rider that it shall be received subject to relevancy and proof.

12. With the above observation, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Neutral Citation : Yes/No

KST

To

The VII Additional Judge
City Civil Court, Chennai.



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V. LAKSHMINARAYANAN, J.

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