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C.R.P.No.4739 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2024

CORAM

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.4739 of 2024

and

C.M.P.No.26479 of 2024

1.K.Venkatachalam

2.Dr.V.Keerthan

3.Dr.Keerthiraj

...

Petitioners

Vs.

K.Revathi

Rep.by her power agent,

A.Ravi

...

Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 24.09.2024 in I.A.No.5 of 2024 in O.S.No.25 of 2023, on the file of the learned Principal District Judge, Dharmapuri.

For Petitioners

For Respondent

: Mr.R.Selvakumar

: Mr.Prakash Gokulany

for Mr.P.Muralidharan



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ORDER

Heard Mr.R.Selvakumar for the civil revision petitioners and Mr.Prakash Gokulany for Mr.P.Muralidharan appearing for the respondent.

2.This civil revision petition raises an interesting question on law.

3.The suit in O.S.No.125 of 2023 is the one for specific performance of an agreement of sale dated 14.08.2021. The plaintiff pleaded that the defendants had entered into an agreement on 19.02.2020, 10.08.2020 & 17.02.2021. The suit agreement is dated 14.08.2021. He pleaded that he has been ready and willing to convert the sale agreement into a sale deed and hence, he is entitled to decree of specific performance as the defendants are evading execution of the document.

4.The stand of the defendants is that none of the agreements were meant to be agreements of sale. The first defendant, who filed the written



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statement, pleaded that the plaintiff is a money lender and as security thereof, used to take the sale agreements for the property. His specific plea is that, the plaintiff does not have the capacity to purchase the property and the value reflected for the property in the sale agreement is not the actual value of the property. The foremost plea being that there was a practice between the plaintiff and the defendants to enter into agreements of sale for security purposes and once the loan amount is discharged, to destroy the documents. Prior to the suit, the plaintiff issued a suit notice pleading that after entering into the agreement dated 14.08.2021, the defendants had torn the agreements dated 19.02.2020, 10.08.2020 and 17.02.2021. On the basis of these pleadings, issues were framed and the parties were pushed to trial.

5.During the course of trial, the plaintiff filed an application in I.A.No.5 of 2024 under Section 65 of the Indian Evidence Act r/w Section 151 C.P.C. to introduce five documents. The matter presented in this revision relates to the agreements of sale, dated 19.02.2020, 10.08.2020 and 17.02.2021. Insofar as the first document is concerned, a photostat copy of



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the sale deed was produced. The learned Trial Judge did not agree with the production of such a copy. With respect to the fifth document, being the Government Notification, though it does not require an application to be filed, it was filed and received by the Court.

6.Mr.R.Selvakumar argues that the receipt of the three agreements of sale dated 19.02.2020, 10.08.2020 and 17.02.2021 is erroneous. He relies upon Section 65(a) of the Indian Evidence Act to point out that if a secondary evidence is to be produced by a party, it is his duty to issue a notice to produce the same under Section 66 and if thereafter, the person who has possession of the document does not produce it, the party relying upon the document can adduce secondary evidence.

7.Per contra, Mr. Mr.Prakash Gokulany submits that it is the case of the plaintiff that the three sale agreements of sale entered into prior to the suit agreement were destroyed. He states that if the document has been destroyed, then he would fall under Section 65 (c) of the Indian Evidence



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Act and not under Section 65 (a) of the Act.

8.In response, Mr.R.Selvakumar states that Section 65(c) will apply only when the party producing the document had destroyed or lost the document and it does not apply in a situation, where it is admitted that the documents are with the defendants and the plea of the plaintiff is that the defendants had destroyed the documents.

9.The issue that I have to answer is the interplay between Section 65 (a), Section 66 & Section 65 (c) of the Indian Evidence Act.

10.A careful perusal of the pleadings show that the plaintiff bases his claim on the agreement of sale, dated 14.08.2021. It is not in dispute that the agreements of sale, which has been produced along with the suit, dated 14.08.2021 is the original. The controversy revolves around three previous documents dated as aforestated. (I am not using the word agreement of sale cautiously, since it is the plea of Mr.R.Selvakumar that they were not meant to be such agreements). If I were to agree with Mr.R.Selvakumar, then



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Mr.Prakash Gokulany's client would necessarily have to issue a notice to produce and only thereafter, they are entitled to mark the same by virtue of Section 65 (a). If I were to agree with Mr.Prakash Gokulany, then there is no necessity for the party to give a notice to produce. I reach this conclusion because Section 66 applies only when Section 65 (a) applies. This is clear from the words in Section 66, which relates to notice to produce. It reads as follows,

*“Secondary evidence of the contents of the documents referred to in Section 65, clause (a),
.....”*

11.A reading of the suit notice filed under Ex.A4, in Page 6, makes it clear that even prior to the presentation of the plaint, the case of the plaintiff is that the defendants/noticees had torn the earlier agreements. If the agreements have been torn or destroyed, then the provision which would apply is Section 65 (c). This is because the provision specifically deals with a situation, where, the original has been destroyed or lost or when the party offering evidence and its contents cannot produce the same for any other



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reason not on account of his own default or negligence.

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12.It is the argument of Mr.R.Selvakumar that Section 65 (c) would apply only if the original has been destroyed or lost at the hands of the party producing the document. I am unable to agree with the said contention for the simple reason that when the words of the Statute are clear, it is my duty while interpreting the Statute to apply the same as it stands.

13.When the case of the plaintiff right from the beginning is that the defendants have destroyed the documents, I cannot expect them to perform an impossibility by producing the original. It is only to cover these situations that Section 65 (c) has been included. If the Parliament had wanted Section 65 (c) to read that the original had been destroyed or lost by the party offering the same as an evidence, they would have specifically said so. I am able to see that they have applied it to the later part of the very same Section, which means, that they specifically wanted to exclude that situation from the first part of Section 65 (c).



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14.At this stage Mr.R.Selvakumar pleads that if the notice to produce had been given, his client would have an opportunity to respond stating that the agreements referred to in the petition in I.A.No.5 of 2024 were not meant to be agreements of sale, but were only documents given as security for a loan transactions. When I have found that the limitation of Section 66 applies only to Section 65 (a) and not to Section 65 (c), obviously, I have come to the conclusion that there is no necessity to issue a notice calling upon the parties to produce the documents. In any event, by virtue of introduction of the three documents, it does not take away the right of the defendants' plea that those documents had been executed only for the purpose of security and on discharge, the defendants had taken back the documents from the plaintiff. All those aspects arise at the stage of marshalling of evidence and appreciation of the same, prior to the pronouncement of the judgment.

15.In the light of the above discussions, I do not find any reason to



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take a different view than that taken by the learned Principal District Judge, Dharmapuri, in I.A.No.5 of 2024 in O.S.No.25 of 2023, dated 24.09.2024. Accordingly, the civil revision petition stands dismissed, consequently, connected miscellaneous petition is also closed. No costs.

sli

19.12.2024

Internet: Yes

Index: Yes/No

Speaking/Non speaking order

NCC: Yes/No

To:

The Principal District Judge,
Dharmapuri.



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V.LAKSHMINARAYANAN,J.

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