

(2021) 07 TEL CK 0017

In the Telangana High Court

Case No : Civil Revision Petition No. 1957 Of 2019

Bhujala Srinivasa Reddy

APPELLANT

Vs

Mora Reddy Risheeshwar Reddy

RESPONDENT

Date of Decision : 22-07-2021

Acts Referred:

Citation : (2021) 07 TEL CK 0017

Hon'ble Judges : B. Vijaysen Reddy, J

Bench : Single Bench

Advocate : G V Shivaji

Final Decision : Allowed

Judgement

1. This revision is filed challenging the order dated 16.04.2019 in I.A.No.58 of 2019 in O.S.No.13 of 2017 passed by the IX Additional District Judge,

Wanaparthi, whereunder an application filed by the petitioner/defendant No.2 to receive original agreement of sale dated 22.01.2015 was dismissed.

2. The petitioner is the defendant No.2, respondent No.1 is the plaintiff and the respondent No.2 is the defendant No.1 in O.S.No.13 of 2017 on the

file of the IX Additional District Judge, Wanaparthi. The suit is filed seeking relief of specific performance of agreement of sale dated 22.01.2015; for

delivery of vacant possession of the suit schedule property; to declare sale deed dated 26.07.2017 executed by the defendant No.1 in favour of the

defendant No.2 as null and void and not binding on the plaintiff. The defendant Nos.1 and 2 filed separate written statement. I.A.No.58 of 2019 was

filed by the defendant No.2 to receive original agreement of sale dated 22.01.2015.

3. In the affidavit filed in support of the said application, it was stated by the

defendant No.2/petitioner herein that the agreement of sale was misplaced and he traced out the same recently. Non-filing of the document is neither intentional nor deliberate but due to non-availability of the same.

4. The plaintiff/respondent No.1 opposed the application stating that the agreement of sale dated 22.01.2015 is a created document. It is being filed as an after thought, after commencement of trial and evidence of P.Ws.1 and 2 and the same is being done to overcome the suit agreement of sale.

5. It was further stated that the defendant No.1/respondent No.2 herein did not state in her written statement, counter and chief examination affidavit

that she executed agreement of sale dated 22.01.2015 in favour of the defendant No.2 prior to suit agreement of sale. The defendant No.2 cannot

seek to receive the alleged agreement of sale at this juncture after commencement of trial and the same will cause prejudice to the plaintiff.

6. The Court below dismissed the application, under the impugned order, stating that the evidence on the plaintiff side was closed. On 11.09.2018 the

chief evidence of the D.W.1 is filed. Thereafter, D.W.1 did not turn up. Thereby the Court eschewed the evidence of D.W.1. When the suit was

coming up for argument, the defendants filed a petition to reopen the case and chief examination affidavit of D.Ws.2 and 3 were filed and they were

cross-examined. The Court below recorded the contention of the plaintiff that D.W.1/defendant No.1 did not state in the written statement, counter

and chief evidence that she executed the agreement of sale dated 22.01.2015 in favour of the defendant No.2 and that is an antedated document

created to overcome the suit agreement of sale in collusion with the defendant No.1. The Court below noted that the defendant No.2 has not stated

when the agreement of sale dated 22.01.2015 was misplaced and where it was misplaced; when and where it was traced out. The defendant No.2 did

not state as to what efforts were put in to trace out the said document. Thus, holding that sufficient reasons were not given by the defendant

No.2/petitioner for non-filing of the document, the application was dismissed.

7. Heard Mr. G.V. Shivaji, learned counsel for the petitioner. Notice was ordered to respondents on 12.09.2019. Office endorsement shows that

notice sent to the respondent No.1 returned unserved "left" deemed to be served. Notice sent to the respondent No.1 was served and a

memo of proof of service was filed vide USR.No.56785 of 2019 and 17954 of

2021. However, there is no representation for the respondents either in person or through counsel.

8. Learned counsel for the petitioner has drawn attention of this Court to the written statement filed by the defendant No.2/petitioner herein. There is reference to agreement of sale in paras 4 and 5 of the written statement. In para 5 thereof, it was stated that as per the agreement of sale dated

22.01.2015, the defendant No.2/petitioner approached the defendant No.1/respondent No.2 on 26.01.2017 and paid the balance sale consideration and obtained a regular sale deed bearing document No.8229 of 2017 dated 26.07.2017.

9. The agreement of sale dated 22.01.2015 is sought to be filed by the defendant No.2. Thus, the relevant factor to be considered is whether the defendant No.2 has taken a plea of entering into the agreement of sale dated 22.01.2015. At the stage of receiving the document, it is not for the trial

Court to comment on the genuineness or evidentiary value of the document. The original agreement of sale dated 22.01.2015 cannot be rejected to be

taken on record, merely because the defendant No.1 did not refer to such agreement of sale in the written statement. The document is being

introduced by the defendant No.2. After the document is received, it is for the Court below to assess the veracity and genuineness of the document

during trial and hearing. But at the stage of receiving the document, it was extraneous for the Court below to give a finding that the defendant No.1

did not say anything about the agreement of sale dated 22.01.2015 in her written statement. This Court notes that the agreement of sale dated

22.01.2015 was indeed referred to in the written statement of the defendant No.2, as discussed supra. It was stated that the original agreement of sale

was misplaced. Therefore, the court below ought to have permitted the petitioner/defendant No.2 to file original agreement of sale.

10. The civil revision petition is allowed. The order impugned is set aside. The Court below shall receive the document i.e. original agreement of sale

dated 22.01.2015 subject to proof and relevancy. Any observation made hereinabove shall not be construed as an expression opinion regarding

veracity and genuineness of the document. The Court below shall consider the evidentiary value of the document taking into account the pleadings and

the evidence of the parties.

Pending miscellaneous petitions, if any, shall stand closed.

There shall be no order as to costs.