

(2010) 04 MAD CK 0123

In the Madras High Court

Case No : C.R.P. No. 1448 of 2010 and M.P. No. 1 of 2010

Gunasekaran

APPELLANT

Vs

Ramachandran (deceased Mrs. Kala, Prabhu, Priya and Murugan)

RESPONDENT

Date of Decision : 20-04-2010

Acts Referred:

Evidence Act, 1872 — Section 45

Citation : (2010) 04 MAD CK 0123

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : P. Surya, for the Appellant; P. Mani, for R1 to R4, for the Respondent

Final Decision : Dismissed

Judgement

M. Jaichandren, J.—This Civil Revision Petition has been filed praying that this Court may be pleased to set aside the order, dated

17.12.2009, made in I.A. No. 359 of 2009, in O.S. No. 108 of 2002, on the file of the Subordinate Court, Attur.

2. The petitioner in the present civil revision petition is the defendant in the suit, in O.S. No. 108 of 2002, filed by the respondents. The

respondents had filed the said suit, praying for a decree for specific performance of agreement for sale, dated 3.6.2001. The petitioner had filed an

interlocutory application, in I.A. No. 359 of 2009, praying that the trial Court may be pleased to send the document, dated 3.6.2001, which is the

agreement for sale, marked as Ex.A-1, to obtain an expert opinion.

3. The trial Court, by its order, dated 17.12.2009, had dismissed the interlocutory application filed by the petitioner stating that the application had

been filed, belatedly. The trial Court had also stated that the petitioner, as the

defendant in the suit, had filed a written statement, on 26.11.2002, wherein, he had taken the plea that the signature in the agreement for sale, dated 3.6.2001, is not that of the petitioner. However, the petitioner had filed the interlocutory application, in I.A. No. 359 of 2009, only on 20.10.2009.

4. The learned Counsel appearing on behalf of the petitioner had stated that the order, dated 17.12.2009, made in I.A. No. 359 of 2009, is

contrary to law and the facts of the case. The trial Court ought to have sent the document, dated 3.6.2001, said to be the agreement for sale, for

an expert opinion, especially, when the petitioner had categorically denied the signing of the said document. The learned Counsel had also

submitted that the trial Court had failed to exercise its powers provided u/s 45 of the Indian Evidence Act.

5. The learned Counsel appearing on behalf of the respondents had submitted that the trial Court was right in dismissing the interlocutory

application filed by the petitioner, for sending the document, marked as Ex.A-1, for an expert opinion, as it has been filed belatedly, only with the

mala fide intention of protracting the proceedings in the suit, in O.S. No. 108 of 2002, filed by the respondents. He had also submitted that the

petitioner, having taken the plea that the signature in the agreement for sale, dated 3.6.2001, does not belong to the petitioner, he had not raised

the issues thereafter, till the filing of the interlocutory application, in I.A. No. 359 of 2009, on 20.10.2009. In such circumstances, the civil revision

petition filed by the petitioner is devoid of merits and therefore, it is liable to be dismissed.

6. In view of the averments made on behalf of the parties concerned and on a perusal of the records available, this Court is of the considered view

that the petitioner has not shown sufficient cause or reason to interfere with the order of the trial Court, dated 17.12.2009, made in I.A. No. 359

of 2009.

7. While dismissing the interlocutory application filed by the petitioner, the trial Court had held that the said application had been filed, belatedly. It

had also noted that the petitioner had filed the written statement in the suit, in O.S. No. 108 of 2002, on 26.11.2002, stating that the signature in

the alleged agreement for sale, dated 3.6.2001, does not belong to the petitioner. However, the petitioner had filed the interlocutory application, to

send the documents for expert opinion, only on 20.10.2009, after the trial in the suit had commenced. In such circumstances, the civil revision petition is devoid of merits and therefore, it is liable to be dismissed. Hence, it is dismissed. However, the learned Subordinate Judge, Attur, is directed to dispose of the suit, in O.S. No. 108 of 2002, on merits and in accordance with law, as expeditiously as possible, not later than four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.