

(2013) 04 MAD CK 0205

In the Madras High Court

Case No : C.R.P. (PD) (MD) No. 554 of 2013 and M.P. (MD) No. 1 of 2013

M. Govindarajan and Others

APPELLANT

Vs

R. Ganesamoorthy and Sebastin

RESPONDENT

Date of Decision : 04-04-2013

Acts Referred:

Citation : (2013) 04 MAD CK 0205

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : D. Rajkumar, for the Appellant; M. Subash Babu for R1, for the Respondent

Judgement

R.S. Ramanathan, J.—The defendants in O.S. No. 167 of 2010 on the file of the Principal District Judge, Tiruchirappalli, are the revision petitioners. The first respondent filed the above suit for specific performance of an agreement of sale against the defendants 1 to 7/revision petitioners herein stating that the defendants 1 to 7 executed the power of attorney in favour of the 8th defendant, the second respondent herein and acting on the power, the 8th defendant/second respondent herein entered into an agreement of sale with the plaintiff and received the sale consideration of more than Rs. 35,00,000/- and thereafter the defendants refused to execute the sale deed and therefore the suit was filed. In the written statement the revision petitioners admitted the execution of power of attorney in favour of the 8th defendant/ second respondent herein and also stated that the power given to the 8th defendant was cancelled on 03.01.2008 and with a view to defeat and deprive the legitimate rights of the defendants 1 to 7 the plaintiff in collusion with the 8th defendant concocted the agreement of sale dated 05.12.2007, which was sought to be enforced in the suit and the said agreement of sale is invalid, in-operative and unenforceable in law. The trial Court raised following two issues:

1) Whether the sale agreement entered into between plaintiff and the power agent 8th defendant on 05.12.2007 is true and binding on the defendants 1 to 7.

2) Whether the plaintiff is entitled to the relief of specific performance of sale agreement as prayed for?

Thereafter, the plaintiff filed I.A. No. 192 of 2012 to recast the issue as follows:

18. Since the plaintiff has come forward with the suit on the basis of the fabricated and concocted agreement of sale and hand in glove with the 8th defendant, the plaintiff is liable to pay exemplary costs to the defendants 1 to 7.

The trial Court allowed the application and recast the issues as prayed for by the first respondent and aggrieved by the same, this Civil Revision Petition is filed.

It is submitted by the learned Counsel for the revision petitioners that by recasting the issues, the Court below wrongly placed the burden on the defendants and being the plaintiff the first respondent is bound to prove his case. He further submitted that the issues need not have recast the issues and further submitted that the revision petitioners have no objection for framing the issue which has been recast as additional issue.

2. The learned Counsel for the first respondent/plaintiff submitted that having regard to the plea taken by the revision petitioners in paragraph "14" of the written statement the issues were recast and therefore there is no need to interfere with the order of the Court below.

3. According to me, the Court below without properly appreciating the pleadings erred in deleting the issues already framed and allowed the application filed by the first respondent. Admittedly, the suit was filed for specific performance of an agreement of sale and originally the issues were framed to the effect that whether the plaintiff is entitled to relief of specific performance of the sale agreement as prayed for and that was deleted while recasting the issues and in a suit for specific performance, the Court has to frame the issue regarding the entitlement of the plaintiff to the relief of specific performance. Therefore, the deletion of that issue which was originally framed is not proper. Further, it is the case of the plaintiff that the revision petitioners executed the power of attorney in favour of the 8th defendant and acting on the power, the power agent entered into an agreement of sale and received a major portion of the consideration and the power of attorney was cancelled and therefore the revision petitioners are bound to execute the sale deed as per the agreement of sale executed by the power agent. In the written statement the defendants admitted the execution of power and also stated that the power was cancelled on 03.01.2008. They also pleaded that the revision petitioners in collusion with the 8th defendant created the agreement of sale and therefore the original Issue No. 1 whether the sale agreement entered into between plaintiff and the power agent 8th defendant on 05.12.2007 is true and binding on the defendants 1 to 7 was correctly framed. Further, having regard to the pleadings in paragraph "14" of the written statement that the plaintiff in collusion with the 8th defendant concocted the agreement of sale, the Court below has rightly added the issue which has been recast as per the application filed by the first respondent but the Court should

not have deleted the two issues earlier frame and ought to have added the first issue whether the Registered Agreement dated 05.12.2007, between the plaintiff on the one side and the defendants 1 to 7 represented by 8th defendant as their General Power of Attorney is unenforceable as against the defendants 1 to 7 for reasons set out in the Written Statement filed by the defendants 1 to 7 as an additional issue. Hence, the order of the Court below is modified and the deletion of two issues framed earlier is set aside and the following three issues are directed to be framed by the Court below.

1) Whether the sale agreement entered into between plaintiff and the power agent 8th defendant on 05.12.2007 is true and binding on the defendants 1 to 7.

2) Whether the plaintiff is entitled to the relief of specific performance of sale agreement as prayed for?"

3) Whether the Registered Agreement dated 05.12.2007, between the plaintiff on the one side and the defendants 1 to 7 represented by 8th defendant as their General Power of Attorney is unenforceable as against the defendants 1 to 7 for reasons set out in the Written Statement filed by the defendants 1 to 7.

With the above direction, the Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous petition is closed.