

M.KanthA. Vs. P.Valmurthy

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Court : Chennai

Decided On : Jul-12-2012

Judge : R.Mala, J.

Acts : Specific Relief Act - Section 20(1), 16(c)

Appeal No. : Rev.A.No.102 of 2011 in A.S.No.493 of 2008

Appellant : M.Kantha

Respondent : P.Valmurthy

Advocate for Def. : Mr.J.Alexander, Adv.

Advocate for Pet/Ap. : Mr.R.Thiagarajan, Adv.

Judgement :

Prayer: Review Petition is filed against the Judgment and decree dated 14.03.2011 passed in Appeal Suit in A.S.No.493 of 2008.

ORDER

1. This review petition is filed by the respondent in A.S.No.493 of 2008, who lost the legal battle, both in the trial Court and in the first Appellate Court.
2. The respondent herein filed a suit for specific performance on the basis of the sale agreement executed by the review petitioner. Since the review petitioner has

not performed his contract, the respondent herein filed a suit for specific performance in O.S.No.428 of 2004, before Principal District Court, Chengalpet, which was renumbered as O.S.No.7 of 2007 on the file of the Principal District Court, Thiruvallur. After contesting, the suit for decree of specific performance has been passed and the review petitioner herein was directed to execute the registered sale deed in favour of the plaintiff/respondent herein for a total consideration of Rs.14,85,000/- within three months from the date of decree and also directed to deliver the vacant possession of the suit property, against which, the defendant as an appellant preferred an appeal in A.S.No.493 of 2008 and the same has been dismissed by confirming the judgment of the lower Court, against which, the Review Petition is filed by the appellant.

3. Mr.R.Thiagarajan, the learned counsel for the review petitioner submitted that there is an error apparent on the face of record which vitiates the conclusion reached by this Court in A.S.No.493 of 2008. Ex.A1/Sale agreement is a concocted document and after obtaining signatures only, the document was created and concocted by the respondent herein with a view to foist a false, frivolous, vexatious case against the appellant/review petitioner. He further stated that respondent herein in collusion and connivance with one A.Rangasamy/P.W.2, the third attesting witness, manufactured and concocted the said document. Hence, there is an error apparent on the face of record which calls for review of the decision. He further stated that as per Section 20 of the Specific Relief Act, the Court should exercise its discretion on sound and reasonable manner and as such the discretion which has been exercised arbitrarily, capriciously, perversely is subject to correction of a Court of appeal as could be seen from Section 20(1) of the Specific Relief Act. Section 16(c) of the Specific Relief Act, reveals that readiness and willingness is not a mere empty formality to the plaintiff should aver and proof readiness and willingness as required under Section 16(c) of the Specific Relief Act. He further submitted that the signatures of the review petitioner, her husband and daughter are concocted and forged for this purpose. Hence, he prayed for review the decision of this Court passed in A.S.No.493 of 2008. To substantiate his arguments, he relied upon the decision reported in 2012 3 CTC 59 (Malthesh Gudda Pooja v. State of Karnataka and others) and submitted that this Court has power to review the order.

4. Mr.J.Alexander, learned counsel for the respondent submitted that the review petitioner trying to drag on the proceedings has filed this review not to execute the sale deed. At the time of argument in appeal, no defence raised that the signature has been obtained on blank paper and subsequently, it was concocted. It is further submitted that the review petitioner herself admitted that the signature in Ex.A1/sale agreement is belonging to her and that factum has been considered by both the Courts below. Hence, there is no error apparent on the face of record. All the points now raised have been raised at the time of appeal itself and after considering both sides argument, this Court rendered the Judgment. Hence, there is no need to review the decision of this Court. Therefore, he prayed for dismissal of the review petition.

5. Considered the rival submissions made on both sides.

6. Now this Court has to consider Order 47 of Civil Procedure Code, which is read as follows:

ORDER XLVII- REVIEW

1. Application for review of judgment (1) Any person considering himself aggrieved

a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

b) by a decree or order from which no appeal is allowed, or

c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

[Explanation The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.]

7. The learned counsel for the appellant/review petitioner would submit that the review petitioner has not preferred any appeal against the judgment passed in A.S.No.493 of 2008. But from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him. Since this Court passed an order, this Court has empowered to entertain the review.

8. At this juncture, it is appropriate to consider the decision relied upon by the learned counsel for the review petitioner reported in 2012 3 CTC 59 (Malthesh Gudda Pooja v. State of Karnataka and others), in which, it was held that hearing review petition before same Judges who passed original order, reason for requiring same Judges to hear application, Judges who decided matter would have heard it at length, applied their mind and would know best, facts and legal position in context of which decision was rendered. The said Judges would be able to appreciate point in issue, when grounds for review raised. But here, the judgment has been pronounced by this Court and the review was placed before this Court. In such circumstances, the above decision is not relevant to the facts of the present case.

9. Now this Court has to decide whether there is any error apparent on the face of record. At this juncture, it is appropriate to consider the arguments advanced by

the learned counsel for the appellant/review petitioner. He would take me through his grounds of review and submitted that this Court ought to have looked into the original agreement for sale dated 7.11.2003 and the document would manifest that it has been manufactured, concocted by the respondent with a view to foist a false, frivolous and vexatious case against the review petitioner.

10. Now it is appropriate to consider the written statement filed by the review petitioner in the suit. In para-3 and 4, it was stated as follows:

"3. The reply categorically specified that the alleged agreement dated 07.11.2003 was not entered by this defendant and that the notice of the plaintiff being silent about the mode and manner of the alleged payment of advance sum of Rs.3,00,000/- itself would betray the plaintiff that no consideration was received by the defendant from the plaintiff. In the documents filed under Order VII Rule 14(1) of C.P.C., that original sale agreement dated 7.11.2003 was executed by the defendant to the plaintiff which exposes the unilaterality of the alleged agreement in the sense that the agreement is not bilateral.

4. This defendant empathetically denies that she has not entered into Agreement of sale dated 7.11.2003 with the plaintiff or his nominees. This defendant denies the receipt of Rs.3,00,000/- on 7.11.2003. Hence, the plaintiff is called upon to prove both the execution and payment of consideration. Even if assumed that there was an agreement of sale without admitting there cannot be a contract between the parties herein favouring a third party un-named nominee.
"

11. While perusing affidavit filed by D.W.1/the review petitioner herein, in para-4, she stated that when she was chatting with her daughter, her daughter told her that at request of D.W.1's husband, she put her signature in the blank paper. D.W.1 further stated that she did not receive Rs.3,00,000/- either from the respondent or his men. In para-5, she stated that she has not executed the sale agreement on 7.11.2003 either at Villivakkam or Walaja. She gone to the extent of saying that she did not sign in Ex.A1 sale agreement and since she is an illiterate, it is very easy to sign her name. In her chief-examination, D.W.1 has stated that signature in Ex.A1 is forged one.

12. When D.W.1 was in witness box at the time of cross-examination, she stated that her husband was directed her to execute the sale deed in favour of the respondent, since he received an advance amount from the respondent herein. But she refused the same and directed her husband to return the advance amount. She also deposed that the advance amount paid by the plaintiff/respondent herein was deposited in Ambattur Bank of Baroda in her husband's account. So it is appropriate to incorporate the following portion of evidence:

VERNACULAR (TAMIL) PORTION DELETED

13. D.W.1/review petitioner in her cross examination, further stated that on the date of sale agreement, when she was in her daughter's house at Walaja, her husband, respondent/plaintiff and one Rangasamy came with the document and obtained her signature. It is appropriate to incorporate the following portion from her evidence:

VERNACULAR (TAMIL) PORTION DELETED

So the above portion of her evidence would clearly prove that D.W.1 has executed a sale agreement Ex.A1 and her daughter also signed as a witness in the document. She further stated that she did not receive any advance amount, but she fairly conceded that the signature in Ex.A1 is belonging to her. Further she stated that there was an agreement on 7.11.2003. On 12.11.2003, advance amount of Rs.3,00,000/- was deposited into the Bank in her husband's account. Her husband is not having an habit of cheating others. Since she refused to execute the sale deed, there was difference of opinion between herself and her husband. It is appropriate to incorporate the following portion of evidence:

VERNACULAR (TAMIL) PORTION DELETED

On considering the above evidence, in para-8 of its judgment, this Court came to the conclusion that Ex.A1/sale agreement is true and genuine document. Even it is an unilateral document, it is enforceable in law.

14. As per Section 20 of Specific Relief Act, the discretion exercised by the Court is neither arbitrary nor perverse, it is supported by sound and reasoning only on the evidence of D.W.1. This Court also considered several judgments in respect of specific performance and came to the correct conclusion.

15. It is true, in page-3 of the sale agreement, signature was found in the end of the page. But review petitioner herself admitted that P.W.1, P.W.2 and her husband prepared the document and obtained signature from her, when she was at her daughter's house. As per Section 16(c) of Specific Relief Act, this Court considering readiness and willingness of the respondent, who is an agreement holder, granted decree of specific performance. Readiness and willingness also proved by the respondent and on that basis only, this Court confirmed the decree of specific performance passed by the trial Court. In such circumstances, I am of the view, this Court has considered all the aspects in proper perspective and passed Judgment on merits. Neither any error apparent on the face of record nor sufficient reason to review the Judgment passed by this Court. So the review petitioner/appellant is not entitled any remedy under this review petition. Hence, the Judgment in A.S.No.493 of 2008 is liable to be confirmed and the review is liable to be dismissed.

16. In fine,

(i) Review Application is dismissed.

(ii) The appellant/review petitioner is directed to pay the costs to the respondent.

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