

IN THE COURT OF THE SENIOR CIVIL JUDGE AND JMFC AT SEDAM

PRESENT:

SRI.SAGAR GURUGOUDA PATIL

Senior Civil Judge & JMFC., Sedam ^{B.A., LL.B(Spl).}

DATED THIS THE 10th DAY OF JULY-2023.

ORIGINAL SUIT No.49/2022.

PLAINTIFF:

Vijaykumar

(Sri.V.J.M.Advocate)

(V E R S U S)

DEFENDANTS:

Poornima and another

(Deft.1 by Sri.S.S.A. Advocate)

(Deft.2 by Sri.TVP. Advocate)

I.A.No.III

Vijaykumar

Applicant/Plaintiff

//Versus//

Poornima & another

Opponents/Defts

Orders on IA No.III U/O 18 Rule 1 and 2 of CPC

The plaintiff has filed this application U/O 18 Rule 1 and 2 of CPC and sought to liberty to lead his evidence after closure of defendants side evidence.

2. The plaintiff has sworn to an affidavit in support of IA and stated that the defendant No.1 has filed the written statement and admitted the execution of agreement of sale dated 29.5.2014 and receipt of sale consideration amount and also the execution of supplementary deed dated 2.4.2020 and receipt of Rs.5,00,000/- in the month of 2020. Therefore issues 1 to 3 and 5 does not arise. Hence prays to allow this application.

3. The defendant No.2 has filed objections to IA and contended that the plaintiff and defendant No.1 have filed the collusive suit to extract amount from the defendant No.2. He has further contended that he did not enter into agreement of sale dated 28.12.2020. He had not signed the said document. The defendant no.1 executed another registered agreement of sale dated 20.1.2021 in favour of the defendant No.2. The defendant No.1 and her husband created agreement of sale dated 28.12.2020 by forging the signature of this defendant. The defendant No.1 or her husband never disclosed about the alleged agreement of sale executed in favour of the plaintiff and also the supplementary agreement of sale dated 29.5.2014. The plaintiff is required to prove the agreement of sale. Hence prays to dismiss the IA.

4. Perused the records. Heard arguments.

5. The following points that arise for my consideration:
1. Whether the plaintiff has made out a grounds to permit him to lead his evidence after closure of the defendants evidence?
 2. What order?

6. My findings to the above points are as under:

Point No.1. In the Negative.

Point No.2: As per final order, for the following:

REASONS

7. **Point No.1:** The plaintiff has filed this suit for the relief of specific performance of contract of sale alleging that the defendant No.1 being the owner of the suit property entered into sale transaction with the plaintiff and executed unregistered agreement of sale dated 29.5.2014 and supplementary agreement of sale dated 2.4.2020. He has further alleged that during subsistence of the agreement of sale, the defendant No.1 sold the suit property to defendant No.2 on 1.7.2021.

8. After service of suit summons the defendant No.1 and 2 appeared through their counsels and filed separate written statements. The defendant No.1 in his written statement at para No.3 has stated that he signed some papers on 2.4.2020 without knowing its contents. On perusal of the entire written statement of the defendant No.1 no where he has admitted the execution of agreement of sale dated 29.5.2014 and supplementary agreement dated 2.4.2020. In para 3 of

the plaint he has pleaded that he received Rs.5,00,000/- from the defendant No.1. But he has not pleaded when he received the said amount i.e., he has not stated that he received the amount in the month of March 2020 as pleaded by the plaintiff. Therefore the plaintiff is required to prove issues 1, 2 and 5.

9. The suit agreement of sale is unregistered one. The defendant No.2 being the purchaser of the suit property has contended that the suit agreement of sale was created by the plaintiff and defendant No.1 in collusion with each other with an intention to blackmail the defendant No.2 and extract money from him. Therefore though the defendant No.1 admits the suit agreement of sale the date on which the said agreement was entered into becomes crucial one. Under such situation even the allegations made by the defendant No.2 against the plaintiff and defendant No.1 assumes importance. Since the agreement of sale is unregistered one the contention of the defendant No.2 also appears probable. Therefore the burden is on the plaintiff to prove that the suit agreement of sale is genuine one and it is not created one by the plaintiff and the defendant No.1 in collusion with each other. Therefore merely because the defendant No.1 has denied the execution of the agreement of sale it cannot be held that the execution of the agreement of sale is proved. But it has to be considered in the light of the defence of the defendant No.2. Therefore evidence on the said issues of both sides is very much just and necessary and the defendant No.2 has to be given an opportunity to cross-examine the plaintiff to see the trustworthiness of the pleadings and the suit agreement of sale. Therefore the plaintiff cannot dictate that the defendant No.2 lead the evidence first and he will lead evidence after the closure of the evidence of defendant No.2.

10. The defendant No.2 has made specifically allegations that the plaintiff and defendant No.1 in collusion with each other have got created suit agreement of sale. When there is an allegation of collusion it is required to give an opportunity to the defendant No.2 to traverse the evidence of the plaintiff and defendant No.1 who are alleged to be colluded with each other. Therefore the defendant No.2 is directed to lead evidence first it will cause irreparable loss and untold hardship to the defendant No.2.

11. Apart from this the plaintiff is required to prove issue No.8. The burden to prove the readiness and willingness is imposed by the statute. Therefore merely because the other side has admitted it cannot be said that the plaintiff is not required to prove the readiness and willingness. Unless the plaintiff proves readiness and willingness the burden does not shift either on the defendant No.1 or the defendant No.2.

12. It is pertinent to note that as per the provisions of Order 18 Rule 1 and 2 of CPC the right to begin is with the plaintiff and in exceptional cases the defendant has got right to begin. It is to be noted carefully that the legislature has used the word right and not duty. Therefore it is for the defendants to say that he will begin the evidence if he wishes to do so. But the plaintiff or the court cannot force the defendant to begin first. It is the option left to the defendant either to begin first or lead evidence after the closure of the plaintiff's evidence. Therefore the plaintiff cannot dictate the defendant No.2 to commence his evidence first. Hence I answer point No.1 in the Negative.

13. Point No.2: For the foregoing reasons, I proceed to pass the following:

ORDER

The application filed by the plaintiff U/O 18
Rule 1 and 2 of CPC is hereby dismissed.

(Dictated to the Stenographer directly on computer and corrected, signed and then pronounced by me, in the open Court on this the **10th day of July-2023**, at Sedam)

(Sagar Gurugouda Patil)
Senior Civil Judge & JMFC.,
Sedam.