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C.R.P(MD).Nos.2203, 2205 and 2207 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.R.P(MD).Nos.2203, 2205 and 2207 of 2019

and

C.M.P(MD)No.11481 of 2019

Vincent Arockiyasamy

... Petitioner/1st Defendant
in all CRPs

Vs.

1.R.Kannan

2.R.Johnson

...1st & 2nd Respondents/Plaintiffs
in all CRPs

3.Chellappa

... 3rd Respondent/2nd Defendant
in all CRPs

(Memo dated 26.02.2020 presented before the Court on 26.02.2020 is recorded to the effect that R3 is given up as no relief sought for against him vide Court order, dated 18.03.2020 made in C.R.P(MD)Nos.2203, 2205 & 2207 of 2009)

COMMON PRAYER : Civil Revision Petitions filed under Article 227 of Constitution of India, to call for the entire records pertaining to the order passed by the Additional District Munsif, Ambasamuthram, Tirunelveli District in I.A.Nos.1, 2 and 3 of 2019 in O.S.No.208 of 2011, dated 17.09.2019 and set aside the same.



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For Petitioner : Mr.R.Anand
in all CRPs

For R1 & R2 : Mr.R.J.Karthick
in all CRPs

COMMON ORDER

These Civil Revision Petitions are filed against the orders passed in I.A.Nos.1 of 2019, 2 of 2019 and 3 of 2019 in O.S.No.208 of 2011 on the file of the learned Additional District Munsif, Ambasamuthram, Tirunelveli District. The first defendant in O.S.No.208 of 2011 on the file of the learned Additional District Munsif, Ambasamuthram is the revision petitioner in all these Civil Revision Petitions.

2.Brief facts of the case:-

The respondents 1 and 2 are the plaintiffs in O.S.No.208 of 2011 on the file of the learned Additional District Munsif, Ambasamuthram, Tirunelveli District. The respondents 1 and 2 as plaintiffs have filed the said suit against the defendants 1 and 2 for the relief of declaration that the suit property is absolutely belonged to them and for permanent injunction and in the alternative, if the Court finds that the suit property is not in possession of the plaintiffs, directing the first defendant to hand



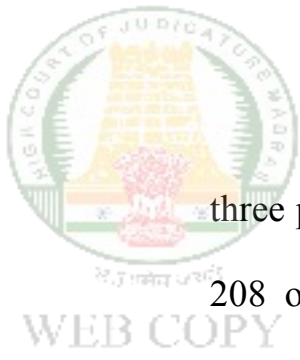
over the possession of the suit property to the plaintiffs. After adducing both sides evidence and after hearing both sides, the suit was reserved for judgment. At this stage, the trial Court has re-opened the case for clarification in respect of suit property. Then the plaintiffs came to know that they have in-advertently marked photostat copy of sale deed, dated 18.07.1966 executed by Durai Nadar in favour of the plaintiffs father Rajamani Nadar as Ex.A1. The original sale deed had been marked as Ex.A1 in O.S.No.214 of 2009, which was filed regarding some other property described in the said sale deed. Appeal is pending against the said suit. The plaintiffs have obtained copy of the sale deed dated 18.07.1966, which was filed in O.S.No.214 of 2009. The plaintiffs marked photostat copy of the sale deed dated 18.07.1966 instead of certified copy of the same. Therefore, the plaintiffs have filed the petition in I.A.No.1 of 2019 to re-open the case, petition in I.A.No.2 of 2019 to re-call PW1 and petition in I.A.No.3 of 2019 to permit for marking document. The first defendant alone has contesting the main suit and also contested these petitions stated that the plaintiffs have filed these petitions to drag on the suit proceedings and also wanted to mark a document, which was decided in an earlier suit and hence, the petitions do not have any merit. After hearing both sides, the trial Court has passed impugned order, dated 17.09.2019 that the petitions to be allowed



on payment of cost of Rs.1,000/- for each petition by the plaintiffs to the first defendant. Aggrieved by the above conditional orders passed by the trial Court the first defendant/first respondent moved this Court by way of these Civil Revision Petitions.

3. Heard the learned counsel appearing on either side and perused the materials available on record.

4. The learned counsel for the revision petitioner has vehemently argued that the revision petitioner is the first defendant in the main suit in O.S.No.208 of 2011 on the file of the learned Additional District Munsif, Ambasamuthram. After closure of evidence by both sides and after hearing arguments of both sides, the trial Court has reserved the main suit for judgment. The revision petitioner, who is the first defendant in the main suit has put forth his main arguments with the plaintiffs, who has sought for the relief of declaration that the suit property is belonged to them, have marked only photostat copy of sale deed and hence, the plaintiffs are not entitled to the reliefs sought by relying on citation of the Hon'ble Supreme Court. But unfortunately, the trial Court has re-opened the case for clarification in respect of suit property and hence the trial Court has given a lead to the plaintiffs, resulting the plaintiffs have filed



three petitions in I.A.Nos.1 of 2019, 2 of 2019 and 3 of 2019 in O.S.No. 208 of 2011 for re-opening the case and marking the documents by recalling PW1. The plaintiffs have no valid material in support of their case and therefore, the plaintiffs have filed these petitions to drag the case proceedings. He further argued that the certified copy of sale deed dated 18.07.1966, which was wanted to be marked had been already discussed by the trial Court in an earlier suit in O.S.No.214 of 2009 filed by the very same plaintiffs and the same was dismissed. Hence, the plaintiffs are prevented from marking the said document by the doctrine res judicata. However, the trial Court has failed to take into consideration of the facts and circumstances of the case and passed the conditional order for allowing those petitions. The trial Court is not correct to allow those petitions and therefore, the impugned orders to be set-aside by allowing these Civil Revision Petitions.

5. The learned counsel appearing for the contesting respondents 1 and 2 has argued that the respondents 1 and 2 are the plaintiffs in the main suit. In the main suit, after letting evidence by both sides, the arguments of both sides were heard by the trial Court on 10.06.2019. The trial Court has *suo-motu* re-opened the main case for some clarification. On such *suo-muto* re-opened, the plaintiffs came to know



that they marked photo copy of sale deed, dated 18.07.1966 instead of original document. The learned counsel further argued that the original sale deed dated 18.07.1966 was executed in favour of father of the plaintiffs namely Rajamani Nadar by Durai Nadar. The said document was marked in O.S.No.214 of 2009 in respect of some other property and the document discussed is with regard to some other property, not for suit property in question. The document recites various properties including the suit property and hence there is no question of res judicata. The learned counsel further argued that the trial Court has passed conditional order on payment of cost by the plaintiffs in the aforesaid petitions in I.A.Nos.1 of 2019, 2 of 2019 and 3 of 2019 and allowed by the trial Court. After that PW1 was died and hence PW2 was re-called and examined and the document wanted to be received was also marked through PW2 and the contesting first defendant has also cross-examined at length. So the case is pending for argument and decision of the trial Court in respect of the said sale deed. There would be no purpose served in the event of these Civil Revision Petitions to be allowed and therefore the same are liable to be dismissed.

6. On hearing both sides and on perusal of records, it is clear that the respondents 1 and 2 as plaintiffs have filed the main suit in O.S.No.



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208 of 2011 on the file of the Additional District Munsif Court, Ambasamuthram, Tirunelveli, for the reliefs of declaration, permanent injunction and in the alternative recovery of possession. Admittedly, there is no dispute with regard to the sale deed, dated 18.07.1966 standing in the name of Rajamani Nadar, father of plaintiffs. The plaintiffs have stated that they have in-advertently marked photo copy of the sale deed instead of original sale deed, since it was already marked in a earlier suit in O.S.No.214 of 2009. The revision petitioner herein, who is the contesting first defendant has placed his argument that the plaintiffs have no valid case in the suit and they wanted to drag on the suit, which is pending from the year 2011 by filing Interlocutory Petition in I.A.Nos.1, 2 and 3 of 2019. The trial Court has reserved the suit in O.S.No.208 of 2011 for judgment and later re-opened the case for clarification. The revision petitioner argues that the trial Court has given lead to the plaintiffs to fill up lacuna in this case. It is settled principle of law that the trial Court has empowered to make clarification at any stage of the case before delivering its decisions. It is further settled principle of law that each and every litigant has to be given sufficient opportunity to prove their respective case. Mere allowing re-open petition, re-call petition and for marking a document in a civil suit, no prejudice will be caused to the opposite party. Because, in this nature of suit, both parties



are at liberty to produce sufficient documentary evidence in order to prove their respective case before the conclusion. The contesting respondents has placed arguments that the sale deed, dated 18.07.1966 was marked in O.S.No.214 of 2009 in respect of some other property and hence, there is no question of res judicata. There is no contra arguments put forth by the revision petitioner herein.

7. It is further clear that the trial Court has already allowed those three petitions and ordered to re-call of PW1. The trial Court has rightly discussed all perspectives and allowed the petitions. But PW1 died and hence, concerned Sub Registrar was examined as PW2, cross examined by the revision petitioner as first defendant and the document in question, certified copy of sale deed dated 18.07.1966 was also marked as Ex.P1.

8. Considering the above facts and circumstances, as rightly argued by the respondent side, this Court is of the view that there would be no purpose would serve in case of allowing these Civil Revision Petitions. In the facts and circumstances of the case, the revision petitioner in these Civil Revision Petitions has no merits in this case and the trial Court has rightly passed the impugned orders in the petitions in I.A.Nos.1, 2 and 3 of 2019 in O.S.No.208 of 2011, which need no



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interference by way of these Civil Revision Petitions and thus these Civil Revision Petitions are failed and the same are liable to be dismissed.

9. In the result, these Civil Revision Petitions are dismissed.

No costs. Consequently, connected Miscellaneous Petition is also dismissed.

19.04.2023

NCC : Yes/No
Index : Yes/No
vsd

To

- 1.The Additional District Munsif,
Ambasamuthram,
Tirunelveli District.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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vsd

Order made in
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