

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 8.1.2015

Delivered on: 16.4.2015

Coram:

The Hon'ble Mr.Justice V.Ramasubramanian

Civil Revision Petition (PD) No.4888 of 2014
and
M.P.No.1 of 2014

N.Ravindran ... Petitioner/Defendant

Versus

V.Ramachandran ... Respondent/Plaintiff

Civil Revision Petition under Article 227 of the Constitution of India, against the Fair and Decreetal Order dated 3rd day of December 2014 passed by the learned XVI Assistant Judge, City Civil Court, Chennai, in I.A.No.16549 of 2014 in O.S.No.300 of 2006.

For Petitioner : Mr.AR.L.Sundaresan, Sr.Counsel
for Mr.J.R.Bhavanantham
For Respondent : Mr.N.R.Chanddran, Sr.Counsel
for Mr.K.J.Parthasarathy.

ORDER

This Civil Revision filed under Article 227 of the Constitution challenges the dismissal of an application filed by the defendant in a suit for recovery of possession, for the issue of a subpoena to the Director of Forensic Sciences to compare the handwriting and signatures in the disputed and admitted documents namely Exhibits B22 to B26 with Exhibits B2 to B21.

2. I have heard Mr.AR.L.Sundaresan, learned Senior Counsel for the

Petitioner and Mr.N.R.Chandran, learned Senior Counsel for the Respondent.

3. There is no dispute about the fact that the respondent herein is the owner of the house bearing Old Door No.40, New Door No.14, Venkatesan Street, T.Nagar, Chennai-17. Contending that the respondent had agreed to sell the suit property to him under an agreement dated 10.1.1994 and also received a total amount of Rs.33,00,000/- during the period from 10.1.1994 to 23.6.1994 and also put him in possession, the petitioner herein filed a suit in O.S.No.6514 of 2002 on the file of the XI Assistant Judge, City Civil Court, Chennai, for a permanent injunction restraining the respondent herein from evicting and dispossessing him. But the said suit was dismissed for non-prosecution on 25.10.2005.

4. Thereafter, the respondent filed a suit in O.S.No.300 of 2006 on the file of the XVI Assistant Judge, City Civil Court, Chennai for recovery of possession. During the pendency of the said suit, the petitioner herein filed a suit in C.S.No.264 of 2007 on the Original Side of this Court for specific performance of the agreement of sale. The plaint in the said suit C.S.No.264 of 2007 was rejected by me under Order VII Rule 11 C.P.C., on the ground that the suit was barred by law.

5. The rejection of the plaint in C.S.No.264 of 2007 filed by the petitioner herein for specific performance, ordered by me on 30.7.2008 was confirmed by a Division Bench of this Court by a judgment rendered on 14.3.2011 in O.S.A.No.379 of 2008.

6. As against the judgment of the Division Bench upholding the

rejection of plaint in the suit for specific performance, the petitioner filed a Special Leave Petition in SLP (Civil) No.27330 of 2011. What happened before the Supreme Court requires to be noted and it is extracted as follows:-

"After arguing for a while learned senior counsel for the petitioner sought permission to withdraw the petition. Permission granted. Accordingly, the special leave petition is dismissed as withdrawn. However, the petitioner shall be at liberty to raise all defences available to him in the suit filed by respondent for possession, as may be permissible in law."

7. Thereafter, the petitioner took out two applications, one in I.A.No. 19911 of 2011 under Order XIV Rule 1 C.P.C. to decide the preliminary issue regarding valuation and pecuniary jurisdiction and another in I.A.No.19912 of 2011 under Order VIII Rule 9 C.P.C. to receive additional written statement along with a counter claim. Both applications were dismissed by the trial Court, forcing the petitioner herein to come up with two Civil Revision Petitions. Both the Civil Revision Petitions were disposed of by this Court by a common order dated 15.4.2013. By the said order, C.R.P.(PD) No.2694 of 2012 arising out of the application under Order XIV Rule 1 C.P.C. was dismissed. But the other revision namely C.R.P.(PD) No.2915 of 2012 was partly allowed, permitting the petitioner to file additional written statement without a counter claim.

8. As against the order passed in Civil Revision Petitions, the petitioner went before the Supreme Court in S.L.P.(Civil) Nos. 19529 and 19530 of

2013. The Special Leave Petitions were dismissed by a common order dated 8.7.2013, observing the following:-

" Though the learned senior counsel made a valiant effort to persuade us, we are not inclined to interfere. The petitioner has already raised his defence on the basis of the plea of part-performance in para 9 and 10 of his original written statement. No need of an additional written statement for any further orders. Since the suit is filed by the respondent for an area of 2700 sq. ft., the petitioner cannot enlarge the scope of this suit to 5700 sq. ft. through counter claim which he has filed. All the submissions based on the original written statement, and the additional written statement to the extent is permitted by the High Court will be considered by the Trial Court.

The special leave petitions are dismissed."

9. Thereafter, the petitioner took out an application in I.A.No.9463 of 2013 on the file of the trial Court for sending for certain documents filed by him in his first suit for injunction in O.S.No.6514 of 2012 which was dismissed for non-prosecution. This application was dismissed by the trial Court by an order dated 14.10.2014.

10. After the dismissal of the above applications, the trial proceeded from the stage it was left and the petitioner appears to have cross-examined the respondent/plaintiff. The cross-examination was completed on 27.8.2013.

11. Thereafter, the petitioner took out an application in I.A.No.16549 of 2014 under Order XXVI Rule 10A of the Code for the issue of subpoena to the Director of Forensic Sciences Department to compare the signatures and handwriting in the disputed documents with admitted documents. This

application was dismissed by the trial Court by an order dated 3.12.2014. It is against the said order that the petitioner/defendant has come up with the above Civil Revision Petition.

12. As seen from the order of the trial court, the application for referring certain documents for Forensic examination was rejected by the trial court on the ground that the petitioner was indirectly attempting to agitate the point that he had a written agreement with regard to the suit property, despite the fact that the said contention was already rejected. Though the petitioner cited several decisions to show that the court has the power to examine the signatures and certain documents first by itself and thereafter by sending it for Forensic examination, the trial court found that the attempt of the petitioner was nothing but a camouflage to re-agitate the old issue.

13. Even in the Civil Revision Petition, it is not denied by the petitioner that the issue as to whether there was a written agreement of sale or not, is already settled. In the last line of para 29 of the decision of this court in C.R.P.(PD) Nos.2915 and 2694 of 2012 dated 15.4.2013, this court had observed as follows:-

"Admittedly, there is no agreement of sale in writing between the parties to invoke the benefits of Section 53(A) of the Transfer of Property Act."

14. Again in para 31 of the same order, it is recorded that the agreement of sale alleged to have been executed by the petitioner was not in writing. Therefore, the court made it clear that the petitioner cannot any

more rely upon Section 53(A) of the Transfer of Property Act.

15. Once this is clear, I do not know what was the purpose of sending documents for Forensic examination.

16. The attempt of the petitioner appears to be only to drag on the proceedings, as he is in actual physical possession of the property. It is a pity that the suit is of the year 2006 and the trial actually commenced in 2006 itself but could not be completed. The evidence of P.W.1 was recorded on 13.12.2006. The petitioner herein was set ex parte on 29.3.2007. Thereafter, the ex parte decree was set aside and the matter reopened. Subsequently, the petitioner appears to have filed Interlocutory Applications one after another, to ensure that the suit is not disposed of. It will be useful to reproduce a tabular statement contained in the counter filed by the respondent, that gives details of the Interlocutory Applications filed by the petitioner.

<i>S. No.</i>	<i>IA. No.</i>	<i>Date of Filing</i>	<i>Prayer</i>
01	19911/2011	07/12/2011	To Decide Preliminary Issue
02	19912/2011	07/12/2011	Leave to file Addl. Written Statement
03	721/2012	09/01/2012	To Frame Addl. Issues
04	8561/2013	17/06/2013	Produce Addl. Documents
05	IA Sr. No. 12826/2013	21/06/2013	Hold Enquiry to determine Market Value
06	9137/2013	04/07/2013	Hold Enquiry to determine Market Value
07	9463/2013	10/07/2013	Send for Documents
08	14097/2013	23/08/2013	Produce Additional Documents
09	159/2014	03/01/2014	Recall DW1
10	821/2014	17/01/2014	Reopen DW1

<i>S. No.</i>	<i>IA. No.</i>	<i>Date of Filing</i>	<i>Prayer</i>
11	2360/2014	11/02/2014	Produce Documents
12	9189/2014	23/06/2014	Issue Subpoena to SRO
13	10377/2014	11/07/2014	Direction to Remove the Toilet
14	10378/2014	11/07/2014	Permit to Instal 1/2 HP Motor
15	10379/2014	11/07/2014	Permission for Repair Work
16	11186/2014	22/07/2014	Advance hearing in IA No.10377/2014
17	11281/2014	22/07/2014	Advance hearing in IA No.10378/2014
18	11282/2014	22/07/2014	Advance hearing in IA No.10379/2014
19	14099/2014	09/09/2014	Re Open Def. Evidence.

17. Even if we have an independent appraisal of the written statement and the additional written statement filed by the petitioner, it will be clear that no useful purpose will be served in referring any of the documents in question for Forensic examination. Therefore, the application out of which the present revision arises, is wholly frivolous. Hence, the revision is dismissed with costs of Rs.20,000/-. Consequently, M.P.No.1 of 2014 is closed.

16.4.2015

Index: No
Internet:Yes
gr.

To

The XVI Assistant Judge, City Civil Court, Chennai.

V.RAMASUBRAMANIAN, J

gr.

ORDER
IN C.R.P.(PD) No.4888 of 2014

16.4.2015