

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).Nos.3848 and 3849 of 2015
and
M.P. No.1 of 2015

S.Vasanthi

.. Petitioner/Defendant

Vs.

D.Sumathy @ Soumady

.. Respondent/Plaintiff

Prayer:- Civil Revision Petitions are filed under Article 227 of Constitution of India, against the fair and decreetal order dated 17.04.2015 in I.A.Nos.288 & 374 of 2015 in O.S.No.65 of 2014 on the file of the Principal District Court, Puducherry.

For Petitioner :Mr.R.Natarajan

For Respondents :Mr.S.Giritharan

COMMON ORDER

The Civil Revision Petitions are filed against the fair and decreetal order dated 17.04.2015 in I.A.Nos.288 & 374 of 2015 in

O.S.No.65 of 2014 on the file of the Principal District Court, Puducherry.

2.The respondent herein as a plaintiff filed a suit in O.S.No.65 of 2014 for declaring that the alleged sale deed dated 29.12.2005 in favour of Malliga by Subbrayan @ Pakkiri and alleged sale deed dated 14.06.2007 executed by Malliga in favour of the defendant as void ab initio, sham, nominal, non est in the eye of law and will not in any event affect the right of ownership and possession of the plaintiff over the schedule mentioned properties more particularly B schedule property and also for permanent injunction restraining the defendant from disturbing the plaintiff's peaceful possession of the suit property and for permanent perpetual injunction restraining the defendant from creating, executing any further deed or deed of title, encumbering the suit property and to pay the costs of the suit.

3.During pendency of the suit, the respondent/plaintiff has filed an application in I.A.No.288 of 2015 under Order 22 Rule 10 C.P.C. to permit D.Krishnamurthy, who is the son of the plaintiff to prosecute the suit by performing all necessary acts as the transferee and devolve of the interest in the suit property by virtue

of the settlement deed dated 26.01.2015 from the plaintiff. The respondent/plaintiff has also filed an application in I.A.No.374 of 2015 under Order 7 Rule 14(1) C.P.C. for condonation of delay for reception of documents. The trial Court after hearing both sides, allowed the applications, against which, the present revisions have been preferred by the defendant/revision petitioner.

4.Learned counsel for the revision petitioner/defendant submits that the application filed under Order 22 Rule C.P.C. itself is not maintainable, as the affidavit has not been sworn by the plaintiff and the same has been sworn by her son. He further submitted that even though the plaintiff has filed another application under Order 7 Rule 14(1) C.P.C. for condonation of delay for reception of documents, the affidavit has not been sworn by her and the alleged settlement deed was not filed before the Court. Further, the trial Court has not given an opportunity to the revision petitioner/defendant to know the contents and relevancy of the additional documents. That factum was not considered by the trial Court. Hence, he prayed for allowing the revisions.

5. Resisting the same, learned counsel for the respondent/plaintiff submits that after filing the applications, amended plaint and additional written statement have been filed. Therefore, the impugned order passed by the trial Court does not warrant any interference. Hence, he prayed for dismissal of the revisions.

6. Considered the rival submissions made on both sides and perused the typed set of papers.

7. The respondent herein as a plaintiff filed the suit for the aforesaid reliefs. Originally, the suit property belongs to (1) Obenans Lourde Marie, W/o. Late Obenans Xavier, (2) Obenans Prosper and (3) Obenans Christopher, sons of late Obenans Xavier. The plaintiff and one Usha purchased the properties from them by virtue of sale deed dated 31.08.2009.

8. Whereas the revision petitioner/defendant filed a written statement stating that the said Obenans Lourde Marie executed a power of attorney deed in favour of one Subbarayan @ Pakkiri, who

in turn has sold the suit property to one Malliga, W/o Natarajan vide sale deed dated 29.12.2005. The said Malliga has sold the same to the revision petitioner/defendant for valid consideration. Thus, the revision petitioner/defendant has been in possession and enjoyment of the B schedule property.

9. During pendency of the suit, the respondent/plaintiff has filed the application under Order 22 Rule 10 C.P.C. for permitting one Krishnamoorthy, son of the plaintiff to prosecute the suit. According to the revision petitioner/defendant, the application filed under Order 22 Rule 10 C.P.C., is not maintainable. So it is appropriate to extract Order 22 Rule 10 C.P.C., which runs as follows:

**"10. Procedure in case of assignment
before final order in suit—**

(1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1)."

In the above said Rule, it was specifically mentioned that creation or devolution of any interest during pendency of the suit, the suit may by leave of the Court be continued by or against the person to or upon whom such interest has come or devolved.

10. In the case on hand, affidavit was not sworn by the original owner/plaintiff. The respondent/plaintiff herself has filed an application as if she may be permitted her son to prosecute the suit, since she had executed the settlement deed dated 26.01.2015 in favour of her son. It is to be noted that neither the settler has sworn the affidavit nor the settlement deed has been filed to prove the same. Further, the alleged settlee himself has filed the affidavit stating that the settlee may be recognised as a party to the proceedings to prosecute the suit. The trial Court without

considering the same, allowed the application. Under such circumstances, the impugned order passed by the trial Court in I.A.No.288 of 2015 is unsustainable and hence, it is liable to be set aside and it is hereby set aside. Therefore, **C.R.P.(PD)No.3848 of 2015 is allowed.**

11.Insofar as C.R.P.(PD)No.3849 of 2015 is concerned, I.A.No.374 of 2015 has been filed under Order 7 Rule 14(1) C.P.C., for reception of additional document. According to the son of the plaintiff viz., Krishnamurthy, his mother/plaintiff is not doing well and therefore, she is unable to administer her properties and look after the Court cases. Hence, he has sworn the affidavit on behalf of his mother/plaintiff. The trial Court has rightly considered the same by holding that since trial is yet to be commenced, that application was allowed. Merely because the affidavit has not been sworn by the plaintiff/respondent, it is not a reason for dismissing the application. Therefore, the impugned order passed by the trial Court in I.A.No.374 of 2015 does not suffer any infirmity or illegality and it is hereby confirmed. Consequently, **C.R.P.(PD)No.3849 of 2015 is dismissed.** It is left open to the petitioner/son of the plaintiff to file the settlement deed dated 26.01.2015 and prove his

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right over the suit property and implead himself as a party to the suit.

12.In the result, C.R.P.(PD)No.3848 of 2015 is allowed & C.R.P.(PD)No.3849 of 2015 is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index:Yes/No

To

The Principal District Court, Puducherry.

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