

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.4317 of 2015
and M.P.No.1 of 2015

Kaliyaperumal .. Petitioner/Defendant-1

Vs.

Sivaji .. Respondent/Plaintiff

Prayer:- Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 03.09.2015 in I.A.No.1103 of 2015 in O.S.No.318 of 2004 on the file of the District Munsif Court, Jayankondam.

For Petitioner :Mr.R.Nalliyappan
For Respondent :Mr.T.S.Rajeev Gandhi
for M/S.NVS & Associates

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 03.09.2015 in I.A.No.1103 of 2015 in O.S.No.318 of 2004 on the file of the District Munsif Court, Jayankondam.

2.The respondent herein as a plaintiff filed a suit in O.S.No.318 of 2004 for recovery of possession and also mandatory injunction in respect of Items 1 and 2 and permanent injunction in respect of Item No.3. The plaintiff's side evidence has been over and when the suit was posted for defendants' side evidence, the first defendant/revision petitioner has come forward with an application in I.A.No.1103 of 2015 for summoning two witnesses to disprove the sale deed and co-owner of the plaintiff. The trial Court, after hearing both sides, dismissed the application, against which, the present revision has been preferred by the first defendant.

3.Learned counsel for the revision petitioner/first defendant submits that the first defendant wants to examine one Dharmanathan, S/o Kuppusamy Servai and his father Kuppusamy Servai has executed a sale deed in favour of the father of the plaintiff and Mohan, S/o.Kannarao @ Ramasamy, brother of the plaintiff, to disprove the case of the plaintiff. But that factum was not considered by the trial Court. Therefore, he prayed for allowing the revision.

4.Learned counsel for the respondent/plaintiff submits that while passing order, the trial Court has held that Dharmanathan is not a competent person to speak about the sale deed. When he was minor, the sale deed was executed by his father, so examination of Dharmanathan is no way helpful to the case of the first defendant. He further submits that it is well settled dictum of the Apex Court that a co-owner can file the suit for recovery of possession on behalf of another co-owner. In such circumstances, examination of another co-owner will not improve the case of the first defendant and the same has been rightly considered by the trial Court. Therefore, he prayed for dismissal of the revision.

5.Considered the rival submissions made on both sides and perused the materials available on record.

6.The suit has been filed by the respondent/plaintiff stating that his father purchased the suit property, when auction has been conducted in O.S.No.282 of 1961 in respect of third item of the suit property. The father of the plaintiff obtained a sale certificate and he has been in possession and enjoyment of the same. But the

defendants made a construction in the first item of the suit property during March 2003. Further, the defendants 1 and 2 put up a hut in the second item of the property. Therefore, after issuance of notice, the respondent/plaintiff has filed the suit.

7.It is admitted by both sides that Advocate Commissioner was appointed and inspected the suit property and measured the same with the help of qualified surveyor and file his report. Now the plaintiff's side evidence was over and when the suit was posted for defendants' side evidence, the revision petitioner/first defendant has come forward with an application in I.A.No.1103 of 2015 for summoning two witnesses. In the written statement, the defendants stated that the family of the plaintiff was never in possession of the suit property. The property belongs to the father of the defendants namely, Chinnasamy Servai, who purchased the same under the sale deed dated 09.12.1961 from one Kandasamy Pillai. That sale deed was marked as Ex.A6. Now the first defendant wants to examine one Dharmanathan, who is the son of the vendor and his father had executed the alleged sale deed in favour of father of the plaintiff viz., Ramasamy, to prove some facts regarding suit property before the Court.

8.As per the plaint pleadings, the suit property has been purchased by the father of the plaintiff through auction conducted by the Court. So the averments in para-3 of the affidavit filed in support of the application is not relevant. Because the sale deed was allegedly executed in the year 1981. So examination of Dharmanathan is no way helpful to the case of the first defendant. That factum was rightly considered by the trial Court. The trial Court has given its findings that once the document has been marked without objection it is not appropriate on the part of the first defendant to summon the witness to question the said document. Further, the first defendant cannot seek permission to summon the plaintiff's side witness. If the first defendant has purchased a portion of the suit property, he may very well file a suit for partition.

9.Considering the aforestated circumstances of the case, I am of the view, the application for summoning two witnesses is filed only to drag on the proceedings. The trial Court has considered all the aspects in proper perspective and came to the correct

conclusion. Therefore, the order passed by the trial Court does not suffer any infirmity or illegality and it is hereby confirmed. The civil

R.MALA,J.

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revision petition deserves to be dismissed and it is hereby dismissed.

10.In the result, the Civil Revision Petition stands dismissed.
No costs. Consequently, connected Miscellaneous Petition is closed.

14.12.2015

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Index:Yes/No

To

The District Munsif Court, Jayankondam.

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