

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.4510 of 2015

and

M.P. No.1 of 2015

J.Devadoss

.. Petitioner/Plaintiff

Vs.

Malarvizhi

.. Respondent/Defendant

Prayer:- Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 13.08.2015 in I.A.No.496 of 2015 in O.S.No.269 of 2008 on the file of the Principal Sub-Court, Coimbatore and II Additional Sub-Court (Incharge), Coimbatore.

For Petitioner :Mr.S.Mukunth

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 13.08.2015 in I.A.No.496 of 2015 in O.S.No.269 of 2008 on the file of the Principal Sub-Court, Coimbatore and II Additional Sub-Court (Incharge), Coimbatore.

2.At the time of admission, argument of the learned counsel for the revision petitioner is heard in length.

3.The revision petitioner herein as a plaintiff filed a suit in O.S.No.269 of 2008 for declaring that the suit property viz., the extent of 750 sq.ft. absolutely belong to the plaintiff as per the registered sale deed dated 12.08.2003 and for consequential injunction directing the defendant to remove the illegal construction or structures raised by her in the suit extent and also granting a sum of Rs.1,000/- per month against the defendant towards the use and occupation of the suit land from the October 2006 the date on which the defendant occupy the building till September 2007 and to pay a sum of Rs.1,000/- per month towards the damages for use and occupation of the suit land from the date of the suit till the date of deliver of possession of the said extent to the plaintiff. The plaintiff stated that he has purchased the suit property under two registered sale deeds and he is the owner of the suit property. In the plaint, further it was stated that originally the Town Survey field 1971, Krishnarayapuram village was a State Government Poromboke land and several encroachments were made therein.

Then the said survey field was sub-divided as 1071/1, 1071/2, 1071/3 and 1071/4. Later on, the State Government, in order to allot house sites to Court Amins of the Coimbatore District Court, removed all the encroachments existed in T.S.No.1071/4 and measured the same and divided the extent in T.S.No.1071/4 as house sites. Assignment of house sites were made and the suit property, which referred as site No.120, was allotted to the Court Amin viz., one Mr.R.Ganesan, S/o.N.Ramasamy as per the assignment order dated 10.11.1978. The said Assignment Order is produced by the plaintiff as plaint document No.2 and later, the said Ganesan sold the suit property as a vacant site to one R.Kannan, S/o.M.Rangasamy Thevar under a registered sale deed dated 08.11.1989. In turn, the said Kannan sold the suit property as vacant site to one B.P.Bharadwaj, S/o.S.D.Bharadwaj under a registered sale deed dated 21.12.1994. The plaintiff has purchased the suit property from the said Bharadwaj on 12.08.2003, so the plaintiff is in possession and enjoyment of the suit property. Thereafter, he came to know that the defendant has encroached upon the suit property and made construction. Hence, he forced to file the suit for the above said reliefs.

4.The defendant filed a written statement stating that he has not encroached upon the suit property and he is in possession and enjoyment of the same. Further, it was stated that the plaintiff being a stranger to the suit property, is now claiming right over the same. Admittedly, plaintiff's side evidence has been over. When the defendant was in witness box, the defendant/respondent herein has filed an application in I.A.No.496 of 2015 under Rule 75 of the Civil Rules of Practice read with Section 151 of C.P.C. for summoning the Town Sub-Inspector of Survey, Coimbatore to produce relevant records in respect of the suit property and adjacent properties including T.S.No.10/1071/2 and 10/1071/4 and also adduce evidence before the Court. The trial Court, after hearing both sides, allowed the application, against which, the present revision has been preferred by the revision petitioner/plaintiff.

5.Learned counsel for the revision petitioner/plaintiff submits that while filing an application for send for document, there must be pleadings that whether the respondent/defendant has applied for certified copy of the document and whether he is unable to obtain the same and also relevancy of the document. Then only, he is

entitled to file an application for send for document. To substantiate his arguments, he relied upon the decision of this Court reported in 2011 (1) MWN (Civil) 288 (Thirunavukkarasu v. Rajendran) and the same has been followed by this Court in 2012 (2) MWN (Civil) 588 (V.Murugaiyan and others v. A.Kanakasabapathi Thevar and others). Therefore, he prayed for allowing the revision petition.

6. In the above decision, the plaintiffs have not produced any document before the trial Court to show that they have also applied for certified copy and that the same was not granted. There is no quarrel over the above proposition. In the case on hand, the defendant/revision petitioner stated that there is an issue in respect of T.S. number to the suit property and therefore, issuance of summons to the competent authority to produce the relevant records in respect of the suit property and depose about the same, is necessary.

7. On perusal of the prayer sought for in the application reveals that issuance of summons to the competent authority to produce the record in respect of suit property and also adduce

evidence before the trial Court. Furthermore, Rule 75 deals with summons for the production of records in the custody of a Public Officer other than a Court.

8.It is well settled law that misquoting of provision of law is not a ground for dismissal. Merely because the defendant/respondent herein has quoting Rule 75, it will not take away the prayer for summoning the witness to produce the document and depose about the same. The trial Court has considered all the aspects in proper perspective and came to the correct conclusion. So the order passed by the trial Court does not suffer any infirmity or illegality and it is hereby confirmed. The revision petition deserves to be dismissed and it is hereby dismissed.

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

01.12.2015

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Index:Yes/No

To

The Principal Sub-Court, Coimbatore

(II Additional Sub-Court (Incharge)), Coimbatore.

R.MALA,J.

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