

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **07.10.2015**

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.R.P.PD.No.2634 of 2012

and

M.P.No.1 of 2012

Varapathy	Vs	...	Petitioner
1.Ravichandran 2.Vijaya		...	Respondents

Prayer: Revision petition is filed against the fair and decreetal order dated 29.06.2012 and made in I.A.No.322 of 2012 in O.S.No.38 of 2011 on the file of the learned District Munsif, Rasipuram.

For Petitioner :Mr.T.Dhanyakumar

For Respondents :Mr.G.Pugazhenth

ORDER

The fair and decreetal order dated 29.06.2012 and made in Interlocutory application in I.A.No.322 of 2012 in O.S.No.38 of

2011 on the file of the learned District Munsif, Rasipuram are under challenge in this revision.

2. The revision petitioner herein is the plaintiff in the suit, whereas, the respondents are the defendants.

3. It appears from the records that the revision petitioner has filed the above suit as against the respondents/defendants seeking the relief of declaration and for the consequential relief of permanent injunction.

4. This suit was contested by the respondents/defendants by filing their written statements. The trial commenced and the process of recording of evidence on the part of the revision petitioner/plaintiff was completed and the first respondent/first defendant was examined as DW1 on behalf of the respondents.

5. Only at that stage, the first respondent/first defendant has come forward with an application in I.A.No.322 of 2012 under Order VIII, Rule 9 and Section 151 of the Code of Civil Procedure, seeking permission to file additional written statement. Despite strenuous contest on behalf of the revision petitioner/plaintiff, by filing his counter statement, the trial Court has proceeded to allow

that application on 29.06.2012. Challenging the impugned order dated 29.06.2012, present revision is filed.

6. Heard Mr.T.Dhanyakumar, learned counsel appearing for the revision petitioner and Mr.G.Pugazhenthir, learned counsel appearing for the respondents.

7. Mr.T.Dhanyakumar, while advancing his arguments, has stated that the original written statement as well as the additional written statement were filed by the respondents/defendants. In the original written statement, the respondents/defendants had admitted that the revision petitioner had purchased the property but in fact he had not been in physical possession of the suit property. In the additional written statement, they had stated that the revision petitioner/plaintiff had purchased the suit property fraudulently by creating a fake sale deed.

8. Mr.T.Dhanyakumar has further submitted that the said fact of fraudulent purchase was not mentioned in the original written statement. He has also submitted that the revision petitioner / plaintiff had originally executed a Power of Attorney Deed in favour of the first respondent/first defendant on 16.11.2004, only for the purpose of maintaining the suit property,

as he was not able to maintain, after his purchase. Taking advantage of the Power of Attorney Deed executed in his favour dated 16.11.2004. The first defendant/first respondent had been claiming absolute right over the suit property. Mr.T.Dhanyakumar has also argued that the learned trial Judge without understanding the principle laid down in the decision of the Apex Court in ***P.A. Jayalakshni Vs. H.Saradha and others(2009 (4) CTC 201)*** had proceeded to allow the application, which is against the settled proposition of law by the High Court as well as the Supreme Court. Therefore, the learned counsel has urged to set aside the impugned order.

9. On the other hand Mr.G.Pugazhenthii, learned counsel appearing for the respondents has submitted that the first respondent/first defendant had not changed his plea in his additional written statement. As argued by Mr.T.Dhanyakumar, the first respondent/first defendant had admitted that the revision petitioner/plaintiff had purchased the property but that purchase was based on the fraudulent document and that the fraudulent purchase alone had been resisted and challenged by the first respondent/first defendant. This fact has been elaborately discussed by the trial Court in its impugned order dated 16.11.2004 and in fact the decision relied upon by Mr.T.Dhankumar cited

supra, had also been referred to in the impugned order by the trial Court.

10. This Court has considered the submissions made by both the learned counsels. Having regard to related facts and circumstances, this Court finds that this suit has been filed by the revision petitioner/plaintiff for declaration to declare his title to the suit property, but it has been challenged by the first respondent/first defendant.

11. It is also pertinent to note here that the first respondent/first defendant has contented that the sale in respect of the suit property had been purchased by the revision petitioner/plaintiff fraudulently. Whatever may be the case, since the plea of fraud has been taken out by the first respondent/first defendant, the onus to prove the alleged fraud in respect of the purchase lies on him and therefore, this Court finds that the impugned order does not require the interference of this Court. Under this circumstance, this revision petition is liable to be dismissed.

12. Accordingly, the revision petition is dismissed, confirming the impugned order dated 29.06.2012.

However, the trial Court is directed to dispose of the main suit in O.S.No.38 of 2011 within a specific period of three months from the date of receipt of a copy of this order without loss of further time.

T.MATHIVANAN,J.

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Consequently, connected miscellaneous petition is also closed. No order as to costs.

07.10.2015

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To

The learned District Munsif,
Rasipuram.

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and
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