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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.03.2015

CORAM:

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

C.R.P. (MD) .No.304 of 2015 (PD)

and

M.P. (MD) .No.1 of 2015

Mohammed Yoosuf

... Revision Petitioner

vs.

Balasubramanian

... Respondent

PRAYER: This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.653 of 2014 in O.S.No.71 of 2010 on the file of the District Munsif Court, Pattukottai, Thanjavur District dated 16.12.2014 by allowing this civil revision petition.

For Petitioner : Mr.D.R.Murugesan

For Respondent : No appearance

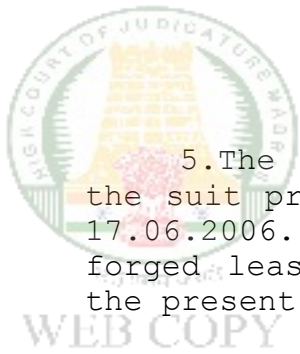
O R D E R

The plaintiff is the revision petitioner. This revision is filed against the order, refusing the petition filed under Section 115 of C.P.C., to reopen the plaintiff's side evidence.

2.The suit is filed for permanent injunction restraining the defendants from interfering with the suit property. The plaintiff is in possession and enjoyment of the suit property, as a tenant under one Saraboji.

3.According to the plaintiff, there is a lease agreement between the plaintiff and the said Saraboji, which was also marked as exhibit in the suit. However, the defendant falsely claimed that the suit property belonged to him and claimed that the plaintiff was a tenant under him. As the plaintiff has been paying rent to the said Saraboji, the burden is on the plaintiff to establish his tenancy under the said Saraboji. Therefore, an application was filed under Section 151 C.P.C to reopen the case and to examine the said Saraboji on the side of the plaintiff. The said application was contested by the defendant, who is the respondent herein contending that the intention of the plaintiff is only to drag on the suit and the said Saraboji has no right or title over the suit property. The plaintiff also had not assigned any valid reason for not examining the said Saraboji during the trial. The trial Court on consideration of the facts and evidence, dismissed the application. Aggrieved by the same, the above revision is preferred.

4.According to the plaintiff, the defendant has got no right or title over the suit property. As the defendant tried to interfere with the possession of the plaintiff, the suit was filed for injunction. The defendant also claimed that the plaintiff was the tenant under him. As the plaintiff claims to be a tenant only under the said Saraboji and had been paying rent to him, he wanted to examine the said Saraboji on his side.



5.The defendant contended that the said Saraboji claimed patta for the suit property, which was rejected by the District Revenue Officer on 17.06.2006. The plaintiff colluded with the said Saraboji, had created a forged lease agreement and encroached over the suit property and filed the present suit.

6.Though the suit has been filed in the year 2010, the trial commenced only after two years. Thereafter the plaintiff's side evidence was closed on 04.10.2013 and the defendant's side evidence was closed on 30.10.2013. When the suit was posted for argument of the defendants' side on 12.12.2013, the plaintiff filed an application in I.A.No.680 of 2013 to amend the plaint, which came to be dismissed on 07.02.2014.

7.On 12.02.2014, the defendants' side argument was also heard. Even after that the plaintiff had been dragging on the proceedings by representing to the Court that a revision was preferred against the dismissal of I.A.No.681 of 2013. However, the revision filed by the plaintiff before this Court was dismissed on 02.12.2014 and the suit was posted for arguments on 04.12.2014 by which time, this application has been filed by the plaintiff.

8.Even in the plaint, it has been averred that the plaintiff is a tenant under the said Saraboji. Whiles, nothing prevented the plaintiff examining him on his side, during the course of trial. The plaintiff had also not assigned any valid reason for not examining him at the appropriate time. From the conduct of the plaintiff, it is clear that it is only an exercise of procrastination and there is no bonafide in the case of the plaintiff.

9.An application has been filed under Section 151 of C.P.C to reopen the case, no doubt, the Courts have got power under Section 151 of C.P.C to reopen the case. While exercising the inherent power, the Courts have to be cautious and have to be used with circumspection and care. The power under Section 151 C.P.C can be exercised only to meet the ends of justice and to prevent abuse of process of Court. If a party comes across some evidence which he could not lay his hands earlier, or some evidence in regard to the conduct or action of the other party comes into existence, the Court may in exercise of its inherent power under Section 151 of C.P.C permitting to reopen the case.

10.Admittedly, in the present case, there is no reason as to why the plaintiff was waiting to examine the said Saraboji. It is his specific case in the plaint itself that he was a tenant under him. Besides, the argument of the plaintiff was heard even as early as 2013 and at his own instance, which had been delayed till 2014 and now, the applications are filed after the arguments are completed by both sides and the suit is posted for judgment.

11.The trial Court by impugned order had elaborately dealt with the way in which the plaintiff has been conducting himself in the trial of the suit. The Apex Court also held that recording of evidence should be continuous followed by arguments without any gap.

12. In such circumstances, this Court has satisfied with the order passed by the trial Court is correct and there is no need for reopening the case for summoning the witness at the belated stage. The order of the



trial Court does not warrant interference and the same is confirmed.

In the result, the civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(T&P)

Sub- Assistant Registrar

To
The District Munsif,
Pattukottai
Thanjavur District.

+1cc to Mr.D.R.Murugesan, Advocate in SR.No.12465

sm:30.03.2015:3P/3C

C.R.P. (MD) .No.304 of 2015
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