

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2016

CORAM:

THE HON'BLE **MS. JUSTICE R.MALA**

C.R.P.(NPD).No.1927 of 2014

Christopher Rathinaraj

S/o.Rathinam

... Petitioner/Defendant/Petitioner

Vs.

Gunasundari

W/o.Late Gnansekaran

... Respondent/Plaintiff/Respondent

Prayer:

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decretal order dated 02.01.2014 made in Review Application S.R.No.4513/2013 in O.S.No.135/2010 on the file of the District Munsif Court, Chengalpattu in dismissing the same.

For Petitioner : Ms.C.R.Rukmani

For Respondent : Mr.K.Sankaranarayanan

ORDER

The present Civil Revision Petition has been filed challenging the impugned order dated 02.01.2014 made in Review Application

S.R.No.4513/2013 in O.S.No.135/2010 on the file of the District Munsif Court, Chengalpattu.

2.The respondent herein as plaintiff has filed the suit in O.S.No.135/2010 for permanent injunction. Subsequently, the said suit was amended for including the second prayer to declare that the sale deed dated 19.03.2009 bearing document no.1319 of 2009 on the file of the Joint-II, S.R.O Chengalpattu by the said Rajan to the defendant with respect to the suit property has to be declared as null and void. After contest, the suit in respect of permanent injunction was dismissed, however the prayer in respect of declaration of the sale deed as null and void came to be allowed. When that being so, instead of filing an appeal against the order passed by the Trial Court, the revision petitioner/defendant preferred a review application which was not numbered. Further, the said review was rejected in the S.R stage stating that the review is not maintainable against the judgment and decree of the Trial Court, since there is no error apparent on the face of the record. Challenging the said order of the Trial Court, the present Civil Revision Petition has been preferred.

3.The learned counsel appearing for the revision petitioner would submit that the power agent is having every right to execute

the sale deed till the power of attorney deed is cancelled. To substantiate the said contention, the learned counsel relied on the decision reported in **(2009) 14 Supreme Court Cases 782, Rajni Tandon v. Dulal Ranjan Ghosh Dastidar and Another**. The learned counsel would further contend that no reason has been assigned in the plaint as to why the sale deed has to be declared as null and void. The learned counsel had drawn my attention to the last four lines in paragraph 4 of the plaint. It is further contended that though the prayer has been amended, no amendment has been made in the cause of action with regard to the cancellation of the sale deed. The learned counsel had also drawn my attention to paragraph 7 of the judgment and submitted that the Trial Court had not considered the fact in proper perspective and came to a conclusion. Furthermore, as per ground nos.4, 5, 7 and 8 review is maintainable. Hence, the learned counsel for the petitioner prayed for setting aside the impugned order and direct the Trial Court to number the review petition and decide the review on merits.

4. Resisting the same, the learned counsel appearing for the respondent would submit that there is no error apparent on the face of the record and hence, the revision petitioner/defendant ought to have filed an appeal against the decree and judgment of the Trial

Court and review is not maintainable. The Trial Court has rightly considered the same and rejected the review application as not maintainable, in the light of the decision of the Hon'ble Apex Court. Hence, the learned counsel for the respondent prayed for dismissal of the civil revision petition.

5. Considered the rival submissions made by both sides and perused the typed set of papers.

6. It is an admitted fact that the respondent herein as plaintiff has filed the suit only for permanent injunction in the first instance and only subsequently, the suit was amended to declare that the sale deed dated 19.03.2009 is null and void. The Trial Court after framing issues and on considering the oral and documentary evidences had dismissed the prayer for permanent injunction stating that the plaintiff is not in possession of the suit scheduled property and granted the decree of declaration that the sale deed dated 19.03.2009 is null and void. Against the said decree and judgment passed by the Trial Court, the revision petitioner/defendant preferred a review application. However, without numbering the said application, the Trial Court had rejected the same as not maintainable.

7. At this juncture, it would be appropriate to incorporate Order 47 of the Civil Procedure Code.

"Application for review of judgment.- (1) Any person considering himself aggrieved -

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding

the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review."

8. Now, this Court has to decide whether there is any error apparent on the face of the record?

Admittedly, the Trial Court had considered the argument advanced by both sides and passed an order rejecting the prayer for injunction stating that the plaintiff is not in possession of the suit property. However, in paragraph 4 of the grounds for review, it has been stated as follows:

"4. The petitioner submits that the judgment and decree dated 27.08.2013 passed by the Hon'ble District Munsif is manifest with error on the face of it. The learned District Munsif failed to note that in a suit for permanent injunction the primary question is to be decided is that of possession of the suit property on the date of institution of the Suit Court. In other words, the plaintiff who is coming to court seeking the relief of permanent injunction restraining the defendant from interfering with his

peaceful possession and enjoyment of the suit property should prove that he/she was in actual possession over the suit property on the date of the suit and that the defendant tried to interfere with his/her possession. This requisite is not obligatory but mandatory. It is enough to decide as to whether the plaintiff was in possession and enjoyment of the suit property on the date of the suit."

9.The above extract would show that the revision petitioner/defendant wanted to re-appreciate both the oral and documentary evidence directing the Trial Court to sit on its own judgment and pass an order. But the Trial Court had rightly relied on the decision of the Hon'ble Apex Court and negatived the review application stating that there is no arithmetical or clerical mistake and there is no error apparent on the face of the record or omission of law in the judgment rendered by the Trial Court. It is also not the case of the petitioner that there is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed. Therefore, the review itself is not maintainable.

10.Hence, I do not find any reason to interfere with the order

dated 02.01.2014 made in Review Application S.R.No.4513/2013 in O.S.No.135/2010 and the present Civil Revision Petition stands dismissed. However, it is open to the petitioner to approach the appropriate forum for relief in the manner known to law. No costs.

20.12.2016

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To

Learned District Munsif,
Chengalpattu

R.MALA, J.

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