

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.10.2016

CORAM:

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN

C.R.P (PD) Nos.242 & 785 of 2014 and
M.P.Nos.1 of 2014 in C.R.P.(PD) Nos.242 & 785 of 2014

Gopalakrishnan

.. Petitioner in both CRPs

vs.

1.Sundarambal (Died)
2.Mrs.Thilagavathi
3.Gowshik
4.Subbalakshmi
5.Jothi
6.Saroja @ Sarojini @ Rajamani
7.Chinnakkal @ Easwariammal

.. Respondents in CRP No.242/2014

Sundarambal (Died)
1.Mrs.Thilagavathi
2.Gowshik
3.Subbalakshmi
4.Jothi
5.Saroja @ Sarojini @ Rajamani
6.Chinnakkal @ Easwariammal

.. Respondents in CRP No.785/2014

Prayer in CRP (PD) No.242 of 2014:- This Civil Revision Petition has been filed to set aside the fair and decretal order dated 26.11.2013 made in I.A.No.689 of 2013 in O.S.No.1025 of 2010 on the file of the learned II Additional Subordinate Judge, Coimbatore.

Prayer in CRP (PD) No.785 of 2014:- This Civil Revision Petition has been filed to set aside the docket order dated 06.10.2012

made in I.A.No.564 of 2012 in O.S.No.1025 of 2010 on the file of the learned II Additional Subordinate Judge, Coimbatore.

CRP (PD) No.242 of 2014:-

For Petitioner : Mr.S.Sithirai Anandam

R.1 : Died

For R.3 : Mr.R.Nalliyappan

For RR2, 4 to 7 : No Appearance

CRP (PD) No.785 of 2014:-

For Petitioner : Mr.S.Sithirai Anandam

R.1 : Died

For R.2 : Mr.R.Nalliyappan

For RR1, 3 to 6 : No Appearance

COMMON ORDER

The petitioner filed a suit for specific performance in O.S.No.1025 of 2010. The suit was contested by the respondents. When the matter was posted for arguments, the petitioner filed an application in I.A.No.564 of 2012 before the trial Court to re-open the matter for the purpose of marking certain documents. The said application was dismissed by the trial Court on 06.10.2012.

2.Subsequently, the petitioner filed an application in I.A.No.689 of 2013 again with a prayer to re-open the matter for the purpose of marking certain documents. The learned trial Judge having found that a similar application in I.A.No.564 of 2012 was dismissed on 06.10.2012, dismissed the subsequent application in I.A.No.689 of 2013. The order dated 26.11.2013 in I.A.No.689 of 2013 is the subject matter of the Civil Revision Petition in CRP(PD) No.242 of 2014.

3.The learned counsel for the petitioner contended that even in the plaint originally filed in O.S.No.1025 of 2010, the petitioner has taken up the contention that he has paid a sum of Rs.50,000/- by way of a cheque dated 07.06.2006. However, he has not taken steps to produce the bank statement to prove the contention earlier. It was only to prove his case the application was filed.

4.The application in I.A.No.564 of 2012 was originally filed to mark the bank statement as well as the plaint and the preliminary decree in a civil suit in O.S.No.127/2007. The application was dismissed by the trial Court. Even though, the order was passed as early as on 06.10.2012, the fact remains that the petitioner failed to challenge the said order. The trial Court having found that

similar application was dismissed by order dated 06.10.2012, dismissed the subsequent application in I.A.No.689 of 2013 on 26.11.2013.

5.The plaint in the suit was filed in the year 2010. The petitioner filed an application in I.A.No.564 of 2012 only after posting the matter for arguments. Even though the application in I.A.No.564 of 2012 was dismissed on 03.09.2012, for the reasons best known, the petitioner has not challenged the said order. It was only under such circumstances, the learned trial Judge dismissed the subsequent application in I.A.No.689 of 2013. There is no point in considering the Civil Revision Petition in C.R.P.(PD) No.785 of 2014 challenging the order passed by the trial Court in I.A.No.564 of 2012 dated 06.10.2012 in view of the order dated 26.11.2013 in I.A.No.689 of 2013.

6.The petitioner has not taken any action till the matter was posted for arguments for the purpose of marking the documents. It was only after the conclusion of trial and posted the suit for arguments, the petitioner filed I.A.No.564 of 2012. The learned trial Judge was therefore perfectly correct in dismissing the application in I.A.No.564 of 2012. The Court would not come to the rescue of those who were sleeping over their right.

7.I do not find any error or illegality in the order warranting interference by exercising jurisdiction under Article 227 of the Constitution of India.

8.In the result, the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

03.10.2016

jbm

Index: Yes/No

To

The II Additional Subordinate Judge,
Coimbatore.

K.K.SASIDHARAN,J.

jbm

C.R.P.(PD) Nos.242 & 785 of 2014

03.10.2016