

IN THE HIGH Court OF JUDICATURE AT MADRAS

DATED: 29.07.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P.(NPD)No.3882 of 2011
and
M.P.No.1 of 2011

D.Palani

.. Petitioner

Vs.

1.G.Elumalai

2.G.Karunanithi

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.SR.No.546 of 2011 in O.S.No.135 of 2007, dated 10.08.2011, on the file of the learned Sub Court, Tindivanam.

For Petitioner : Mr.P.Vijendran

For Respondents : Mr.A.K.Kumarasamy

ORDER

The petitioner has filed this Civil Revision Petition to set aside the order in I.A.SR.No.546 of 2011 in O.S.No.135 of 2007 dated 10.08.2011 passed by the learned Sub-Judge, Tindivanam.

2. According to the revision petitioner, he as a plaintiff filed a specific performance suit against the respondents herein in O.S.No.135 of 2007 before the learned Sub-Court, Tindivanam. It is his case that he entered into a sale agreement with the respondents herein on 28.05.2006 for a total sale consideration of Rs.2,50,000/- and he paid an advance amount of Rs.2,00,000/- on the date of agreement. Since the respondents herein failed to execute sale deed despite several attempts made by the revision petitioner, he filed the above suit and at the time of filing the suit, he deposited the balance sale consideration of Rs.50,000/- into the Court.

3. It is his further case that he was examined as PW-1 in the above suit and he has not let in further evidence on his side. Thereafter, the trial Court ought to have posted the case for defendants' side evidence and thereafter for arguments. But without

doing so, the Learned Sub-Judge, pronounced judgment by dismissing the suit of the revision petitioner. According to the revision petitioner, no opportunity was given to him by the Learned Judge to put forth his case. Hence, the revision petitioner filed an application in I.A.SR.No.546 of 2011 to set aside the judgment dated 05.08.2011 and to reopen the trial of the case under Section 151 of C.P.C. The Learned Sub- Judge without even numbering the same, rejected by docket order dated 10.08.2011 on the ground that judgment is pronounced on merits. Hence, the petition is not maintainable. Aggrieved over the same, the revision petitioner is before this Court.

4.I heard Mr.P.Vijendran, learned counsel appearing for the petitioner and Mr.A.K.Kumarasamy, learned counsel appearing for the respondents and relevant records are perused.

5.A perusal of records discloses that the suit for specific performance was filed by the revision petitioner against the respondents herein. The said suit was dismissed on merits by judgment and decree dated 05.08.2011. The learned counsel for the revision petitioner argued that after closing plaintiff's side evidence, the learned judge ought to have adjourned the case for defendants'

evidence. But, the learned judge without giving opportunity to the plaintiff dismissed the suit.

6.This Court is not in a position to ascertain what had happened after closure of plaintiff's side evidence. The learned counsel of revision petitioner submitted that the certified copy of notes paper along with plaint sought for by the revision petitioner was returned by the trial Court on 06.09.2011 stating that he is not entitled to get the copy of notes paper as per Chapter-VII, Section 128(iv) of Civil Rules of Practice.

7.A perusal of the preamble portion of the judgment in O.S.No.135 of 2007 disclose that there is no representation on either side on 03.08.2011 till 4.00 p.m. and therefore, the trial Court decided to pronounce judgment based on the available oral and documentary evidences. In this case, the plaintiff was examined in chief and he was cross examined by the defendants. It seems that no evidence on the side of the defendants forthcoming. Hence, the trial Court passed judgment.

8.The trial Court could pronounce judgment as per Order 17,

Rule 2 C.P.C. on the basis of the evidence or a substantial portion of the evidence of any party has already been recorded. Be that as it may, here the revision petitioner filed an application under Section 151 C.P.C. to set aside the judgment dated 05.08.2011 made in O.S.No.135 of 2007 and to restore the suit for reopening trial. The said application was rejected by the trial Court at the threshold itself without even numbering the same, saying that since judgment was delivered on merits and therefore the petition is not maintainable.

9.The said approach of the trial Court is highly arbitrary and unsustainable in law. This Court by exercising its supervisory power conferred under Article 227 of the Constitution of India, decided to set aside the docket order passed by the trial Court dated 10.08.2011. The trial Court ought to have numbered the above application and should have passed a speaking order so as to render sustainable justice to the parties. The order impugned herein is a non-speaking one and the same is liable to be set aside.

10.In view of the foregoing discussion, I am of the considered opinion that the impugned order rejecting I.A.SR.No.546 of 2011 is liable to be set aside in the interest of justice.

11.In the result:

(a) this Civil Revision Petition is allowed by setting aside the order passed in I.A.SR.No.546 of 2011 in O.S.No.135 of 2007 dated 10.08.2011, on the file of the learned Sub-Judge, Tindivanam;

(b) the trial Court is directed to take up the suit and dispose the same on merits and in accordance with law, after affording opportunity to both parties;

(c) the said exercise shall be completed within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

29.07.2016

Note:Issue order copy on 13.09.2017

vs

Index: Yes

Internet: Yes

To

The Sub Court, Tindivanam.

WEB COPY

M.V.MURALIDARAN.J.,

VS



C.R.P.(NPD)No.3882 of 2011
and
M.P.No.1 of 2011

WEB COPY

29.07.2016