

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

C.R.P.(PD) No.4962 of 2014

And

M.P.No.1 of 2014

Sheik Mohamed Maricar
Represented by his Power Agent
Mohamed Mohideen

... Petitioner

Vs.

M.G.Mustafa Kamal

... Respondent

Prayer:

Petition has been filed under Article 227 of the Constitution of India to set aside the order and decreetal order dated 13.03.2014 passed in I.A.No.244 of 2013 in O.S.No.4 of 2013 on the file of the learned District Munsif – cum – Judicial Magistrate, Portonovo and allow this civil revision petition.

For Petitioner : Mr.T.A.Shagul Hameed
For Respondent : Mr.K.P.Chandrasekaran

ORDER

Challenging the impugned order dated 13.03.2014 passed in I.A.No.244 of 2013 in O.S.No.4 of 2013 by the learned District

Munsif – cum – Judicial Magistrate, Portonovo, wherein, the prayer for reception of reply statement under Order VIII Rule 9 of C.P.C. came to be dismissed, this revision has been filed.

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

3. The learned counsel appearing for the petitioner would submit that the petitioner as plaintiff filed suit for declaration that the sale deed dated 24.09.2010 and consequential patta no.1370 issued in favour of the defendant is null and void and also for permanent injunction. The respondent/ defendant filed written statement and contested the same. He also filed additional written statement by making several averments and to repudiate the same, the plaintiff was forced to file a reply statement along with I.A.No.244 of 2013 under Order VIII Rule 9 of C.P.C. and that has been dismissed against which the petitioner/ plaintiff has filed this petition.

4. The learned counsel appearing for the petitioner would further submit that the petitioner/ plaintiff ought to have disputed/

repudiated the allegations made against him by the defendant/respondent in his additional written statement and once the additional written statement has been received, the Trial Court ought to have given time for filing of the reply statement, but however, this petitioner filed a reply statement along with a petition and without considering the same, the Trial Court has dismissed the same and hence, prayed for setting aside of the impugned order.

5.The learned counsel appearing for the respondent fairly conceded that he has no objection to receive the reply statement, however, he wants earlier disposal of the suit in O.S.No.4 of 2013.

6.Considering the submissions made by both sides and on perusal of the typed set of documents, it is known that the petitioner herein has filed a suit for declaration that the sale deed no.2087/2010 dated 24.09.2010 and consequential patta no.1370 issued in favour of the defendant is null and void and also for permanent injunction restraining the defendant and his men, agent or anybody working under the control of the defendant from interfering with the possession and enjoyment of the plaint

schedule property except in accordance and due process of law.

7.It is admitted fact that the defendant filed written statement and subsequent additional written statement and thereafter only, the plaintiff/ petitioner herein came forward to file application to repudiate the averment made in the additional written statement.

8.In such circumstances quoting of wrong provision of law is not a reason for dismissing the application under Order VIII Rule 9 of C.P.C. There is no specific provision for reception of additional pleadings, additional counter, additional reply statement etc. In such circumstances, considering the no objection given by the respondent counsel, this Court feels that it is a fit case for setting aside the impugned order.

9.Accordingly, the impugned order dated 13.03.2014 passed in I.A.No.244 of 2013 in O.S.No.4 of 2013 by the learned District Munsif – cum – Judicial Magistrate, Portonovo is hereby set aside and the reply statement is ordered to be received. Considering the request made by the learned counsel appearing for the respondent

and since the pleading has already been completed, the learned District Munsif – cum – Judicial Magistrate, Portonovo is directed to dispose of the suit in O.S.No.4 of 2013 within a period of four weeks from the date of receipt of a copy of this order on day to day basis.

10.Accordingly, this Civil Revision Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is also closed.

27.01.2016

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Index: Yes/ No
Internet: Yes/ No
To

1.The District Munsif – cum – Judicial Magistrate,
Portonovo.

R.MALA,J.

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