

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2016

CORAM:

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

C.R.P.(PD).Nos.4765 & 4766 of 2015

and

M.P.Nos.1, 1 & 2 of 2015

C.R.P.(PD).No.4765 of 2015

J.Vasanthra
W/o.Late R.Jawahar

.. Petitioner/Petitioner/Defendant

Vs.

Samuel Koshy
S/o.N.S.Koshy

.. Respondent/Respondent/Plaintiff

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 03.09.2015 made in I.A.No.11991 of 2015 in O.S.No.6800 of 2013 on the file of the II Assistant Judge, City Civil Court, Chennai.

C.R.P.(PD).No.4766 of 2015

J.Vasanthra
W/o.Late R.Jawahar

.. Petitioner/Petitioner/Defendant

Vs.

Samuel Koshy
S/o.N.S.Koshy

.. Respondent/Respondent/Plaintiff

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 03.09.2015 made in I.A.No.11992 of 2015 in O.S.No.6800 of 2013 on the file of the II Assistant Judge, City Civil Court, Chennai.

For Petitioner
in both CRP's : Mr.Rajesh Praveen Kumar

For Respondent
in both CRP's : Mr.V.T.Narendiran

COMMON ORDER

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

2. These Civil Revision Petitions have been filed challenging the impugned orders dated 03.09.2015 made in I.A.Nos.11991 of 2015 and I.A.No.11992 of 2015 in O.S.No.6800 of 2013, wherein the applications filed to reopen the evidence and to recall P.W.1 for the purpose of cross-examination came to be dismissed.

3. The learned counsel appearing for the petitioner would submit that the respondent herein as plaintiff has filed the suit for declaration that the sale deed dated 03.10.2000 on the file of the Sub Registrar Office, Velacherry for "B" schedule property is null and void and also for permanent injunction restraining the defendant or any other persons claiming under them by any documents from interfering with the plaintiff's possession of the suit property. The revision petitioner/defendant filed her written statement and contested the suit. While so, when the matter was posted for cross-examination of P.W.1, he was examined in part and subsequently, the cross-examination has been adjourned periodically and thereafter, the evidence on the side of the plaintiff was closed and the matter was posted for evidence on the side of the defendant. At this juncture, the revision petitioner/defendant filed the present applications to reopen

and recall P.W.1 for the purpose of cross-examination. However, the Trial Court had dismissed those applications and as against the same, the present Civil Revision Petitions have been preferred.

4. Challenging the impugned order, the learned counsel for the revision petitioner would submit that as the elder son of the revision petitioner who is a mentally challenged person had underwent open heart surgery, the revision petitioner/defendant was unable to appear before the Court and give proper instruction to her counsel. Hence, she filed the present applications to reopen and recall P.W.1 for the purpose of cross-examination. However, without providing an opportunity to the revision petitioner/defendant to putforth her defence, by way of cross-examining P.W.1, the Trial Court had dismissed the applications preferred by the revision petitioner and hence, the learned counsel prayed for setting aside the impugned orders.

5. Resisting the same, the learned counsel appearing for the respondent would submit that the revision petitioner/defendant is wantonly dragging on the proceedings. Even though the suit was posted for trial on 27.10.2014 and the plaintiff filed his proof affidavit

and Exs.A.1 to A.16 were marked on the side of the plaintiff and the case was posted for cross-examination, the defendant did not cross-examine P.W.1 even though sufficient opportunity was granted and hence, P.W.1 cross-examination was closed. Thereafter, the revision petitioner/defendant filed applications in I.A.Nos.5598 and 5599 of 2015 to reopen the evidence on the side of the plaintiff and to recall P.W.1 for cross-examination. The said applications were allowed on payment of cost of Rs.1500/- to the plaintiff and thereafter, though the matter was posted for several hearings for cross-examination of P.W.1, the defendant did not chose to cross-examine P.W.1 and hence, the evidence was closed. Thus, the act of the revision petitioner/defendant would reveal the malafide intention of the revision petitioner to drag on the proceedings.

6. The learned counsel would further submit that already the evidence on the side of the defendant was closed after the dismissal of the applications preferred by the revision petitioner/defendant and now, the matter has been posted for arguments. However, the learned counsel fairly submitted that if the Court feels that an opportunity must be given to the revision petitioner/defendant to putforth his defence on payment of costs, he do not have any objection. But the

learned counsel prayed for a direction to the Trial Court to dispose of the suit within a stipulated time.

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

8. The respondent herein as plaintiff has filed the suit seeking to pass a decree and judgment declaring that the Sale Deed in favour of the defendant registered as Document No.3525/2000 dated 03.10.2000 on the file of Sub Registrar Office Velacherry for "B" schedule property is null and void and not binding on the plaintiff and consequently grant a decree of permanent injunction restraining the defendant, her men or agents or any other persons claiming under them by any documents from interfering with the plaintiff's possession of suit property. The revision petitioner/defendant filed her written statement and contested the suit.

9. It is admitted by both sides that the plaintiff filed his proof affidavit and Exhibits A.1 to A.16 were marked on the side of the plaintiff and when the matter was posted for cross-examination, it was done only in part. Subsequently, even though several chances were

given, the defendant did not complete his cross-examination and so, the evidence on the side of the plaintiff was closed. Thereafter, the applications filed by the defendant in I.A.Nos.5598 and 5599 of 2015 were allowed on payment of costs on 22.04.2015. However, after the payment of costs though the matter was posted on several hearings viz., 24.04.2015, 08.06.2015 and 17.06.2015, the defendant did not chose to cross-examine P.W.1 and hence, the evidence was closed on 17.06.2015. Thereafter, the present applications have been preferred to reopen and recall P.W.1.

10. It is also admitted by both sides that now the evidence on the side of the defendant was also closed and the matter was posted for arguments. But the revision petitioner/defendant had contended that her elder son who is a mentally challenged person had underwent open heart surgery on 14.05.2015 and hence, she was unable to attend the Court or contact her advocate and give instruction to cross-examine the P.W.1.

11. Considering the aforesaid circumstances, I am of the considered view that an opportunity must be given to the revision petitioner/defendant to putforth his defence. However, considering the

fact that P.W.1 had appeared for cross-examination on every hearing when the matter was posted and only the defendant had failed to cross-examine P.W.1, I deem it fit to allow these Civil Revision Petitions on payment of cost of Rs.5000/- (Rupees Five Thousand Only) to the respondent/plaintiff on or before 28.01.2016, failing which these Civil Revision Petitions stands automatically dismissed.

12. For reporting compliance, call the matter on 29.01.2016.

08.01.2016

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Note : Issue order copy on 20.01.2016

To

The learned II Assistant Judge,
City Civil Court, Chennai.

R.MALA, J.

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Dated : 08.01.2016