

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :28.01.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).Nos.4820 and 4821 of 2015
and M.P.No.1 of 2015

Thangavel .. Petitioner/2nd Defendant
in both CRPs.

Vs.

Palanisamy .. Respondent/Plaintiff in
CRP.No.4820 of 2015

1.Palanisamy .. 1st Respondent/Plaintiff
2.Rangasamy .. 2nd Respondent/1st Defendant
in CRP.No.4821 of 2015

(2nd respondent is made only a formal party and no claim
is made as against him and hence he is given up in this
revision petition)

Prayer:- Civil Revision Petitions are filed under Article 227 of the
Constitution of India, against the fair and decreetal order dated
23.11.2015 in I.A.Nos.1325 and 1326 of 2015 in O.S.No.64 of 2012
on the file of the District Munsif Court, Gobichettipalayam.

For Petitioner : Mr.R.Nagasundaram

For Respondent &
1st respondent in
CRP.Nos.4820 and 4821 of 2015 : Mr.K.Goviganesan

COMMON ORDER

Civil Revision Petitions are filed against the fair and decreetal order dated 23.11.2015 in I.A.Nos.1325 and 1326 of 2015 in O.S.No.64 of 2012 on the file of the District Munsif Court, Gobichettipalayam.

2.The first respondent as a plaintiff filed a suit in O.S.No.64 of 2012 for declaration of title and recovery of possession. The first defendant filed a written statement, which is adopted by the second defendant/revision petitioner herein stating that the plaintiff is the owner of the suit property and the plaintiff agreeing to sell the suit property to the first defendant and one Karuppanna Gounder, has entered into a sale agreement with them and on that basis, the plaintiff received major portion of the amount. Thereafter, both sides evidence has been closed, the matter was heard and when it has been posted for judgment, the second defendant/revision petitioner and the first defendant have filed the applications in I.A.Nos.1325 and 1326 of 2015 respectively under Order 18 Rule 17 and Section 151 C.P.C. for reopen and recall D.W.1, who is the second defendant in the suit. The trial Court, after hearing both

sides, dismissed the applications, against which, the present revisions have been preferred by the second defendant.

3.Learned counsel for the revision petitioner/second defendant submits that the suit filed by the plaintiff is for declaration of title and recovery of possession. But the plaintiff received major portion of the amount by agreeing to sell the suit property to the first defendant and one Karuppanna Gounder, for which, he had entered into the sale agreement with them. On the basis of the sale agreement, the first defendant along with the said Karuppanna Gounder filed a suit against the plaintiff in O.S.No.1 of 2015 for specific performance and for permanent injunction. Therefore, the second defendant/revision petitioner and the first defendant have filed the applications to reopen and recall D.W.1/second defendant respectively, to mark the plaint in O.S.No.1 of 2015 and certified copy of the sale agreement in the present suit proceedings. But the trial Court has failed to consider the above aspect and dismissed the applications by holding that whether the second defendant has locus-standi to file the application for reopen the case, because the plaintiff has entered into the sale agreement only with the first defendant and Karuppanna Gounder and on the

basis of the same, they filed the suit for specific performance. Under such circumstances, the suit filed by the plaintiff for declaration of title and recovery of possession itself is not maintainable. He further submitted that to decide the fact, the plaint and certified copy of the sale agreement are necessary. So the applications for reopen and recall D.W.1 ought to have been allowed and that factum was not considered by the trial Court. Thus, he prayed for allowing the revisions by setting aside the order passed by the trial Court.

4.Resisting the same, learned counsel for the first respondent/plaintiff submits that the main aim of the defendants is to drag on the proceedings. The defendants had already filed I.A.Nos.835 and 836 of 2015 for reopen and recall D.W.2/first defendant, which were allowed on payment of costs. Subsequently, the first defendant has not appeared and hence, their evidence was closed. Thereafter, the defendants filed transfer O.P. to transfer the suit in O.S.No.64 of 2012 to try the same along with O.S.No.1 of 2015, which was also dismissed. Further, the defendants filed I.A.No.1025 of 2015 to send for documents and the same was also dismissed as not pressed. Now the defendants have come forward with the present applications for reopen and recall D.W.1, which

shows the malafide intention of the defendants to drag on the proceedings. Hence, he prayed for dismissal of the revisions.

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

6.The first respondent as a plaintiff filed a suit in O.S.No.64 of 2012 for declaration of title and recovery of possession stating that he purchased the suit property under two sale deeds dated 27.03.1984 and 30.05.1990. During December 1997, the plaintiff borrowed a sum of Rs.50,000/- from the first defendant orally and permitted the first defendant to cultivate the suit property for a period of 15 years in lieu of interest. On 15.02.2012, when the plaintiff demanded for delivery of possession after tendering Rs.50,000/-, the first defendant refused to deliver the possession by denying plaintiff's title. Hence, the plaintiff constrained to file the suit.

7.The first defendant filed the written statement, which was adopted by the second defendant stating that first defendant and one Karuppanna Gounder has entered into the sale agreement with

the plaintiff in respect of the suit property for Rs.2,01,000/- and that the plaintiff received a sum of Rs.1,07,000/- as an advance. Subsequently, the plaintiff received Rs.43,000/- on 22.07.1999 and further received Rs.35,000/- on 12.10.1999. So far, the plaintiff had received Rs.1,85,000/- and in pursuance of the sale agreement, the first defendant and the said Karuppanna Gounder are in possession and enjoyment of the suit property.

8. Admittedly, both sides evidence has been closed, the suit was heard and when it has been posted for judgment, the application for reopen was filed by the second defendant/revision petitioner and the application for recall D.W.1 was filed by the first defendant. In the affidavit filed by the revision petitioner in support of the application in I.A.No.1325 of 2015, it was specifically mentioned that when the matter was posted for appearance of the first defendant, due to difference of opinion with the revision petitioner, he has not appeared before the Court. But it is to be noted that the second defendant has filed I.A.No.1325 of 2015 for reopen and the first defendant has filed I.A.No.1326 of 2015 for recall D.W.1. In the affidavit filed in support of I.A.No.1326 of 2015, it was stated that the first defendant has filed the said application

himself and also on behalf of the second defendant. So it is clear that the averments in the affidavit filed in I.A.No.1325 of 2015 itself is false. Furthermore, the present suit was filed in the year 2012. Now the revision petitioner wants to file the plaint in O.S.No.1 of 2015 and certified copy of the sale agreement before the trial Court in O.S.No.64 of 2012. So they can very well file those documents, when they were examined before the Court.

9. According to the learned counsel for the second defendant/revision petitioner, the second defendant was examined as D.W.1 and first defendant was examined as D.W.2. Now the first defendant wants to recall D.W.1. It is to be noted that the agreement holders are first defendant and Karuppanna Gounder. But the second defendant is not a party in the sale agreement. As already stated that I.A.No.1325 of 2015 has been filed by the second defendant and I.A.No.1326 of 2015 has been filed by the first defendant. It is also pertinent to note that I.A.Nos.835 and 836 of 2015 for reopen and recall D.W.2 were already allowed on payment of costs. Thereafter, since the first defendant has not appeared before the Court, their evidence was closed. After that, argument was heard and when judgment was reserved, the present

applications have been filed. Furthermore, the defendants have not filed any application to condone the delay in filing the documents along with the present applications. It clearly shows the malafide intention of the defendants to drag on the proceedings. The trial Court rightly considered the above aspect in para-5 of its judgment and came to the correct conclusion. Hence, the impugned order passed by the trial Court does not suffer any infirmity or illegality and it is hereby confirmed. Consequently, the Civil Revisions are dismissed.

10. In fine, the Civil Revision Petitions stand dismissed. Since the suit in O.S.No.64 of 2012 is posted for judgment, the trial Court is directed to dispose of the same within a month from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

28.01.2016

Index: Yes/No

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To

The District Munsif Court, Gobichettipalayam.

R.MALA,J.

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and M.P.No.1 of 2015

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