

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2016

CORAM:

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

C.R.P.(PD).Nos.584 & 585 of 2015

and

M.P.No.1 of 2015

C.R.P.(PD).No.584 of 2015

Duraiswamy
S/o.Govindappa Mudaliar

.. Petitioner/Plaintiff/Petitioner

Vs.

1.Natarajan

2.Sankaran

3.Padmanaban

4.Rani

5.Sumathi

6.Suguna

7.Parimala

.. Respondents/Defendants/Respondents

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 11.11.2014 made in

I.A.No.557 of 2014 in O.S.No.737 of 2004 on the file of the District
Munsif Court, Gudiyatham.

C.R.P.(PD).No.585 of 2015

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S/o.Govindappa Mudaliar

.. Petitioner/Plaintiff/Petitioner

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Munsif Court, Gudiyatham.

For Petitioners
in both CRP's : Mr.S.Chandrasekaran

For Respondent
in both CRP's : Mr.K.A.Ravindran, for R1 & R2

R3 to R7 – No Appearance

COMMON ORDER

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

2. These Civil Revision Petitions have been filed challenging the impugned orders dated 11.11.2014 made in I.A.No.557 of 2014 and I.A.No.558 of 2014 in O.S.No.737 of 2004, wherein the application filed reopen the suit and to recall P.W.1 came to be dismissed.

3. The revision petitioner herein as plaintiff has filed the suit for declaration of title of the plaintiff over the 'A' schedule mentioned property, in which 'B' and 'C' scheduled properties form part of the same and also for recovery of possession, after the removal of illegal construction made in the 'B' and 'C' scheduled properties, which forms part of the 'A' scheduled property. In the said suit, when the evidence

on the side of the defendants were closed, immediately the plaintiff filed an application on 17.10.2014 to reopen the suit and to recall P.W.1 to mark additional documents. However the said applications were dismissed, against which the present Civil Revision Petitions were preferred.

4. Challenging the impugned order passed by the Trial Court, the learned counsel for the revision petitioner would submit that there is no delay on the part of the petitioner in preferring the application to reopen the suit and to recall P.W.1. During the examination of witness on the side of the defendants, he has disputed the appointment of Advocate Commissioner and the filing of the report by the Advocate Commissioner. Further, the defendants had not filed the original documents before the Court and hence, the examination of the Sub-Registrar as well as the Advocate Commissioner is necessary. So, the suit has to be reopened. Furthermore, for marking the documents it is mandatory to recall P.W.1.

5. To substantiate his contention, the learned counsel for the revision petitioner relied upon the decision reported in **2006 (2) CTC 49, S.Rathinaswamy v. S.Bhanumathi** and submits that Order 18

Rule 17 CPC empowers the Court to recall at any stage a witness who has been examined and cross-examined. The powers under the Rule are very wide and the Court can recall a witness for the purpose of clarification of any ambiguity or omission noticed.

Thus, the learned counsel for the revision petitioner prayed for setting aside the impugned order.

6. Resisting the same, the learned counsel for the respondents 1 and 2 would submit that though the revision petitioner/plaintiff has filed the suit for declaration and recovery of possession, his main aim is to drag on the proceeding. To cross-examine the witnesses on the side of the defendants, the plaintiff has taken more than 1½ years and now, when the evidence on the side of the defendants was closed, the revision petitioner/plaintiff has chosen to file the present applications. Further, it is a well settled dictum of the Hon'ble Apex Court that the plaintiff has to prove his case and he cannot take advantage of the loop holes and defects in the defendant's case and seek for relief. Merely because the defendant has not filed the original documents, the plaintiff cannot seek to reopen and recall and also seek for the Sub-Registrar to file the documents. The Trial Court has considered all

these aspects in proper perspective and came to the conclusion that the revision petitioner/plaintiff has filed these applications only to drag on the proceedings. Hence, the learned counsel for the respondents 1 and 2 prayed for dismissal of the Civil Revision Petition.

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

8. The revision petitioner herein as plaintiff has filed the suit for the following reliefs:

(a) Declaring the title of the plaintiff over the 'A' schedule mentioned property, in which 'B' and 'C' schedule mentioned properties form part of the same.

(b) Directing the defendants to deliver the vacant possession of the 'A' schedule mentioned properties after removing the illegal constructions morefully detailed in the 'B' and 'C' schedule which forms part of 'A' schedule and put the plaintiff in possession of the same.

9. It is the case of the revision petitioner/plaintiff that the suit properties were originally owned by his father Govindappa Mudaliar. The said Govindappa Mudaliar has executed a Will dated 24.11.1945

bequeathing all his properties in favour of his sons viz., Velmurugan Mudaliar, Natesan Mudaliar and Duraisamy Mudaliar, who is the plaintiff. After the death of the Govindappa Mudaliar, his sons effected partition. Under the partition, some property was allotted to Natesa Mudaliar, who died issueless. The said Natesa Mudaliar during his life time has executed a Will dated 19.09.1985 in favour of the plaintiff bequeathing his share of property that he got under the Will dated 24.11.1945. However, the other brother Velmurugan Mudaliar relinquished his share in favour of his father under the release deed dated 11.12.1952. So, the plaintiff is entitled to get the property by way of inheritance from his father. Thus, the plaintiff becomes an absolute owner of the suit scheduled property. Now the defendants attempted to trespass into the suit property and make a construction and hence, the plaintiff was forced to file a suit for declaration and also for Mandatory Injunction. The defendants filed their written statement and contested the suit. So, it is the duty of the plaintiff to prove his title over the property and only then, he would be entitled to the relief of recovery of possession.

10. It is pertinent to note that the suit is of the year 2004. However, the evidence on the side of the plaintiff was closed only on

14.07.2014 and the evidence on the side of the defendant was closed on 15.10.2014. Immediately, the plaintiff has filed the present applications on 17.10.2014, wherein it has been stated in the affidavit that D4/Sankaran during the course of his examination had denied the appointment of Advocate Commissioner and that the defendant had not filed the original sale deed in their favour and therefore, it becomes necessary to examine the Sub-Registrar and the Advocate Commissioner. However, it is the duty of the plaintiff to prove his case and he cannot seek for the relief on the basis of the loop holes in the case of the defendants. In such circumstances, the reason assigned by the revision petitioner/plaintiff to reopen his case is not sufficient. Further, to recall P.W.1, the plaintiff has assigned the reason that he needs to mark certain documents for which it is necessary to recall P.W.1. However, the plaintiff has not filed any application to condone the delay in filing the documents, which would clearly reveal the malafide intention of the revision petitioner/plaintiff to drag on the proceedings.

11. Considering all the above facts and circumstances, I am of the view that the Trial Court has considered the matter in proper perspective and I do not find any reason to interfere with the order

passed by the Trial Court. Accordingly, these Civil Revision Petitions are dismissed as devoid of merits. However, since the suit is of the year 2004 and the matter has been posted for arguments, the Trial Court is directed to dispose of the suit within a period of one month from the date of receipt of a copy of this order.

12. In fine, these Civil Revision Petitions are dismissed. Consequently, connected miscellaneous petition is closed. No costs.

04.01.2016

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To

The learned District Munsif,
Gudiyatham.

R.MALA, J.

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