

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2016

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.127 of 2016

and

C.M.P.No.681 of 2016

Annammal @ Chinnaponnu

.. Petitioner

Vs

St.Peter's Engineering College
Rep. by its Manager Mr.Saina
S/o.V.Venkateswaralu,
Working as Professor and Head of the
Civil Engineering Department in the College,
Avadi, Chennai - 54.

.. Respondent

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 01.09.2015 made in I.A.No.299 of 2015 in O.S.No.325 of 1999 on the file of the Subordinate Court, Poonamallee.

For Petitioner : Mr.A.M.Krishnamoorthy

ORDER

The Civil Revision Petition is filed against the order dated 01.09.2015 made in I.A.No.299 of 2015 in O.S.No.325 of 1999 on the file of the Subordinate Court, Poonamallee.

2.The petitioner as a plaintiff filed a suit for partition and separate possession of $1/3^{\text{rd}}$ share in the suit property against his father and two brothers and also subsequent purchasers. The first defendant filed the written statement and that has been adopted by the defendants 2 and 3. The 4th defendant filed the written statement which was adopted by the 5th defendant who are the subsequent purchasers. After framing the issues, the plaintiff was examined and his side evidence has been closed. When the matter was posted for defendants side evidence on behalf of the defendants 2 to 5, one Prabhu has filed the proof affidavit. At that time, the 4th defendant filed an application under Order VIII Rule 1A(3) of CPC in I.A.No.299 of 2015 to condone the delay in filing the documents. The Trial Court after hearing both sides has allowed the application. Against which, the present Civil Revision Petition has been filed.

3.At the time of admission, argument of the learned counsel for the petitioner is heard in length.

4.Learned counsel for the petitioner submitted that no authorization letter has been filed by the said Prabhu to show that he is an authorized person to sworn an affidavit. That factum was not considered by the Trial

Court. He further submitted that there is no reason assigned as to the defendants 4 and 5 has not been examined before the Court. That factum was also not considered by the Trial Court. Hence, he prayed for setting aside the impugned order passed by the Trial Court.

5. Considered the submissions made by the learned counsel for the petitioner and also perused the typed set of papers.

6. The petitioner as a plaintiff filed a suit for partition and separate possession against his father, brothers and also the subsequent purchasers. The first defendant filed the written statement which was adopted by the defendants 2 and 3 and the 4th defendant also filed the written statement which was adopted by the 5th defendant and contested the suit. The plaintiff's side evidence has been completed and when the matter was posted for defendants' side evidence, one Prabhu filed proof affidavit. At that time, the 4th defendant filed an application to condone the delay in filing the documents, wherein it was specifically mentioned that the documents are very vital for deciding the case and at the time of filing the written statement, due to inadvertence those documents were not filed. In the counter, the plaintiff raised a plea that the proof affidavit has been filed by a different person and the 5th defendant is the sole authority for the Educational Trust but he has not

filed any application. But admittedly, the 4th defendant was not given up even though the 5th defendant has purchased the property and the 4th defendant is a party to the proceedings. So, he is a competent person to file an application under Order VIII Rule 1 A (3) of CPC.

7. The only point to be decided is that no Power Deed or authorization letter has been filed by the said Prabhu while filing the proof affidavit. It is well settled dictum that it is not necessary that the party to the proceedings alone has to be examined before the Court and the person who is well acquaintance with the facts of the case, is a competent person to depose before the Court. It is the duty of the party to the proceedings to prove the case by examining the vital witness and mark the documents. Merely because the said Prabhu is not a party to the proceedings, it cannot be stated that he cannot file the proof affidavit. But he is the ex-correspondent of the 5th defendant Educational Trust and during his tenure only, the property has been purchased and hence, he is a competent person to examine before the Court. In such circumstances, I am of the view that the Trial Court has rightly held that merely because the proof affidavit has been filed by the third party will not be a reason to dismiss the application filed by the 4th defendant under Order VIII Rule 1 A(3) of CPC. Hence, I do not find any reason to interfere with the order passed by the Trial Court and the same is hereby confirmed.

Consequently, the Civil Revision Petition is hereby dismissed as devoid of merits.

8. In the result, the Civil Revision Petition is dismissed. Further, since the suit is of the year 1999, the Trial Court is directed to dispose of the suit in O.S.No.325 of 1999 within three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

27.01.2016

Index: Yes/No
Internet: Yes/No
cse

To

The Subordinate Court, Poonamallee.

R.MALA. J.,

cse

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