

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2016

CORAM

THE HONOURABLE MR. JUSTICE M.VENUGOPAL

**CRP (PD) No.2139 of 2013
and
M.P.No.1 of 2013**

Thamizhamudan

.. Petitioner

Vs.

Kunjammal

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order passed in I.A.No.466 of 2012 in O.S.No.283 of 2011 dated 16.04.2013 on the file of the Learned Principal District Munsif, Mayiladuthurai.

For Petitioner : Mr.K.Nizamuddin
for M/s.N.A.Nissar Ahmed

For Respondent : Mr.S.Sounthar

ORDER

The Petitioner/Defendant has preferred the instant Civil Revision Petition as against the order dated 16.04.2013 in I.A.No.466 of 2012 in O.S.No.283 of 2011 passed by the Learned Principal District Munsif, Mayiladuthurai.

2.The Learned Principal District Munsif, Mayiladuthurai, while passing the impugned order dated 16.04.2013 in I.A.No.466 of 2012 in O.S.No.283 of 2011, at paragraph 8 had observed the following:

"8.On perusal of the Ex.B1 and B2 Sale Agreement, the said sale agreement was executed for survey No.484/6 to an extent of 0.05 cents and for 0.01 1/6 cents that is totally to an extent of 0.06 1/6 cents only the said document is executed. However, the suit property is said to be situated in survey number 484/2 to an extent of 10 cents only. The above said facts prima facie proves the fact that the survey number and the extent stated in the suit property and in the Ex.B1 and Ex.B2 Sale Agreement entirely defers. Further, on perusal

of the four boundaries of the suit schedule property and the four boundaries stated in the Ex.B1, B2 the said boundaries from top to bottom defers. From the said fact, it is prima facie evident that Ex.B1, B2 document does not pertain to the suit property. When that being the case, there is no need to send the said document to the handwriting expert to determine the fact that the respondent herein executed the said document. Hence, the relief prayed by the petitioner to send the Ex.B1 and B2 document cannot be granted and the petition filed by the petitioner is liable to be dismissed."

and consequently, dismissed the petition with costs.

3.Challenging the correctness and legality of the impugned order dated 16.04.2013 in I.A.No.466 of 2012 in O.S.No.283 of 2011 passed by the Learned Principal District Munsif, Mayiladuthurai, the Learned counsel for the Revision Petitioner/Defendant submits that the impugned order passed by the trial Court is contrary to Law and the same being erroneous one.

4.The Learned counsel for the Petitioner contends that the trial Court while dismissing the I.A.No.466 of 2012 in O.S.No.283 of 2011 had gone into the merits of the case, which had resulted in serious miscarriage of justice.

5.The main grievance of the Petitioner is that the Sale Agreements namely, Ex.B1 dated 28.07.1991 and Ex.B2 dated 23.03.1998, the trial Court had erroneously observed in the impugned order in I.A.No.466 of 2012 in O.S.No.283 of 2011 to the effect that the agreements in question do not relate to the suit property which could be decided only at the time of trial. Added further, the trial Court was not correct in observing that the I.A.No.466 of 2012 in O.S.283 of 2011 was filed only to drag on the proceedings.

6.Per contra, it is the submission of the Learned counsel for the Respondent/Plaintiff that the Exs.B1 and B2, Sale Agreements dated 28.07.1991 and 23.03.1998 respectively, do not pertain to

the suit property and therefore, the said Sale Agreements are not required to be sent for examination of a handwriting expert.

7.Further, the Learned counsel for the Respondent/Plaintiff supported the order of dismissal dated 16.04.2013 in I.A.No.466 of 2012 in O.S.No.283 of 2011 passed by the trial Court.

8.In this connection, this Court very relevantly points out that the Respondent/Plaintiff in the plaint in O.S.No.283 of 2011 on the file of the trial Court had sought a relief of mandatory injunction for demolishing the construction put up by the Defendant (Revision Petitioner) by fixing a time limit and also prayed for passing of an order to remove the construction put up by the Defendant (Revision Petitioner) and to hand over vacant possession. Also, the Respondent/Plaintiff had sought a relief to the effect that in case, the Defendant (Revision Petitioner) did not remove the construction put up by him within the time limit prescribed by the Court, then, the same may permitted to be removed by the Respondent/Plaintiff at the costs of the Defendant (Revision Petitioner).

9.A perusal of the plaint schedule property indicates that the

suit property was mentioned as Survey No.482/2, Pillayarkondu, Nanja 0.21 cents within the stated four boundaries. However, the Revision Petitioner/Defendant in his written statement at paragraph 4 had stated the suit Survey Number as 484/2 but in the documents executed in favour of the Revision Petitioner/Defendant, the Survey Number was mentioned as 484/6 and as per the documents, executed in favour of the Revision Petitioner/Defendant within the four stated boundaries, the Revision Petitioner/Defendant is in possession and enjoyment of 0.06 $\frac{1}{6}$ cents etc. As a matter of fact, the Revision Petitioner/Defendant significantly at paragraph 3 of the written statement had among other things stated that in Ex.B2, Sale Agreement dated 23.03.1998, the four boundaries of the property were described and in document, Ex.B1, Sale Agreement dated 28.07.1991, it was stated that there was an excess of land measuring 3 $\frac{1}{2}$ kuzhi and by way of Ex.B2, Sale Agreement dated 23.03.1998, the same was purchased in addition, which comes to an extent of 0.06 $\frac{1}{6}$ cents.

10.In effect, in I.A.No.466 of 2012 in O.S.No.283 of 2011 filed by the Defendant (Revision Petitioner) before the trial Court under Or.26 R.10(a) of the Civil Procedure Code and Section 73 of the

Indian Evidence Act, 1872, to accept the documents namely, Ex.B1, Sale Agreement dated 28.07.1991 and Ex.B2, Sale Agreement dated 23.03.1998 and to compare the said documents with that of the signature affixed by the Revision Petitioner/Defendant and to send the same for obtaining an expert opinion.

11.It comes to be known that the extent of the suit property is 10 cents but extent of the property mentioned in Ex.B1 and Ex.B2, Sale Agreements only comes to 0.06 1/6 cents.

12.The core stand taken on behalf of the Respondent/Plaintiff is that the survey number, measurements, boundaries described in Ex.B1 and Ex.B2, Sale Agreements dated 28.07.1991 and 23.03.1998 respectively differs with that of the suit property and in view of the fact that the said documents do not pertain to the suit property and the trial Court had rightly dismissed the I.A.No.466 of 2012 filed by the Defendant (Revision Petitioner) and as such, this Court may not interfere with the said order at this distant point of time.

13.It is to be noted that in Ex.B1/Sale Agreement dated

28.07.1991, the Survey Number is mentioned as 484/6. In short, Ex.B1/Sale Agreement dated 28.07.1991 does not relate to the suit Survey No.484/2. In Ex.B1/Sale Agreement, the channel was described as the one situated on the eastern side of the said property but insofar as the plaint suit schedule property in O.S.No.283/2011 on the file of the trial Court is concerned, the suit property was described as one situated on the western side of the channel. On the southern side of the suit property, it was mentioned as there is a Panchayat road. In Ex.B1/Sale Agreement, the southern side of the property is described as one Appasamy's land.

14.Apart from that, the Learned counsel for the Respondent/Plaintiff brings it to the notice of this Court that in the main suit, the Respondent/Plaintiff's side evidence was over and on the side of the Revision Petitioner/Defendant, D.W.1 to D.W.3 were examined and the suit is in part heard stage.

15.At this stage, a plea is taken on behalf of the Respondent/Plaintiff before this Court is that the Revision Petitioner/Defendant had filed I.A.No.466 of 2012 in O.S.No.283 of

2011 on the file of the trial Court only with a view to precipitate the main proceedings of the suit and further, there are no merits in the I.A.No.466 of 2012 filed by the Revision Petitioner/Defendant.

16.At this juncture, this Court aptly points out the decision of ***Venkatachalam V. Angammal and another*** reported in **2003 (2) MLJ at page 525** whereby and whereunder it is observed and held as follows:

"When an application to second the document for comparison has been belatedly filed to drag on the proceedings the application cannot be allowed."

17.In view of the foregoing detailed qualitative and quantitative discussions and also, this Court on a careful consideration of respective contentions and also taking note of the entire conspectus of the attendant facts and circumstances of the instant case in an encircling fashion, comes to an irresistible conclusion that the impugned order dated 16.04.2013 in I.A.No.466 of 2012 in O.S.No.283 of 2011 passed by the trial Court in dismissing the relief sought for by the Revision Petitioner/Defendant

does not require any interference in the hands of this Court sitting in the Revision. Furthermore, the order in I.A.No.466 of 2012 in O.S.No.283 of 2011 dated 16.04.2013 passed by the trial Court is without any flaw.

18.In fine, the Civil Revision Petition is dismissed, leaving the parties to bear their own costs. Resultantly, the order dated 16.04.2013 in I.A.No.466 of 2012 in O.S.No.283 of 2011 on the file of the trial Court is affirmed by this Court for the reasons assigned in this Civil Revision Petition. Consequently, the connected Miscellaneous Petition is also closed.

19.Since the suit is of the year 2011 which is nearly five years old and also in part heard stage, this Court infurtherance of substantial cause of justice, directs the Learned Principal District Munsif, Mayiladuthurai to dispose of the main suit within a period of three months from the date of receipt of a copy of this order and report compliance to this Court without fail.

20.It is abundantly made clear that the dismissal of the present Civil Revision Petition by this Court will not preclude the

respective parties to raise all factual and legal pleas before the trial Court in O.S.No.283 of 2011, ofcourse, in the manner known to Law and in accordance with Law. Further, the trial Court is directed to provide adequate opportunity to both sides by adhering to the Principles of Natural Justice. The trial Court is directed to dispose of the suit within the time stipulated, as adumbrated by this Court as stated supra, and that too, in a dispassionate manner, uninfluenced with any of the observations made by this Court in this Revision.

02.03.2016

Index : Yes

Internet : Yes

DP

To

- 1.The Principal District Munsif,
Mayiladuthurai.
- 2.The Registrar (Judicial)
[for favour of Information &
to Watch and Report],
Madras High Court.

M.VENUGOPAL, J.

DP

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