

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.10.2016

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

CIVIL REVISION PETITION No.2383 of 2012

and

M.P.No.1 of 2012

Karuppusamy

.. Petitioner

VS.

Devaraj

.. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 04.09.2010 passed in I.A.No.294 of 2010 in O.S.No.1817 of 2007 on the file of the learned II Additional District Munsif, Coimbatore.

For Petitioner ... Ms.P.T.Asha

For Respondent ... Mr.S.Subbiah

O R D E R

This civil revision petition is filed against the order dated 04.09.2010 passed in I.A.No.294 of 2010 in O.S.No.1817 of 2007 on the file of the learned II Additional District Munsif, Coimbatore.

2. The revision petitioner is the defendant in the suit. The respondent herein, who is the plaintiff, filed a suit in O.S.No.1817 of 2006 before the learned II Additional District Munsif, Coimbatore seeking permanent injunction restraining the defendant from interfering with the peaceful enjoyment and usage of East – West lane on the Northern side of the suit property by the plaintiff. Written statement was also filed by the defendant. Thereafter, the suit was posted for trial. After completing the plaintiff's side evidence, the suit was posted for the defendant's side evidence. At that point of time, the defendant filed an interlocutory application in I.A.No.294 of 2010 seeking permission of the Court to file three additional documents. The respondent herein/plaintiff filed counter objecting to file the additional documents. The learned trial Judge, after considering the submissions made by the learned counsel on either side and after perusing the documents, allowed the application in part by permitting the defendant to file document Nos.2 and 3 and rejected the first additional document. As against the said order, the present civil revision petition has been filed.

3. The learned counsel for the revision petitioner/defendant contended that the application in I.A.No.294 of 2010 was filed under

Order 81 Rule 1 of the Code of Civil Procedure to receive the additional documents by the revision petitioner and he is entitled to file additional document before adducing evidence. He further contended that filing of additional document is a right of the revision petitioner, which cannot be taken away and the rejection of filing of additional document will affect the effective adjudication of the suit during the final disposal.

4. In support of his submissions, he relied on the decision of the Apex Court in BIPIN SHANTILAL PANCHAL v. STATE OF GUJARAT AND ANOTHER (2001 [3] SCC) wherein paragraph 13 reads thus:

"It is an archaic practice that during the evidence-collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such objection. But the fallout of the above practice is this: Suppose the trial Court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and

then proceeds with the trial and disposes of the case finally. If the appellate or the revisional court, when the same question is recanvassed, could take a different view on the admissibility of that material in such cases the appellate court would be deprived of the benefit of that evidence, because that was not put on record by the trial Court. In such a situation the higher court may have to send the case back to the trial court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or remoulded to give way for better substitutes which would help acceleration of trial proceedings."

5. The learned counsel for the revision petitioner relied on yet another decision in GURUSAMY AND FOUR OTHERS v. SANTHANAM (2006[1]LW 477) wherein paragraph 16 reads as follows:

"By going through the order of the trial court, it is seen that the trial court has deviated from the established norms and procedures, when a petition was filed to receive the documents belatedly. Generally those documents are received subject to proof and relevancy and the admissibility of the documents in evidence should be decided at the time of marking the same as exhibits and at the time of examination of the witnesses, thereby making it as evidence. Till such time, generally, the Court is not expected to go through the admissibility of the document (not barred), since the scope of the petition in this case is to condone the delay and to receive the documents. Mere producing the documents before the court, whether it is registered or unregistered documents, may not amount to

taking the same in evidence as understood in law, and there is further stage for the documents to take a shape of evidence, for relying, only at that stage, the admissibility on the basis of the stamp duty, registration, etc, has to be seen in detail. If the trial Court at that stage comes to the conclusion that the document is inadmissible (even marked for want of registration, stamp duty etc. can reject the same."

6. He also relied on one another decision in RADHA AMMAL (DIED) AND OTHERS v. MANTHI REDDIAR, wherein paragraph 8 reads as follows:

"In this case, insofar as the promissory note is concerned the photocopy shows that the original had been properly stamped. As far the mortgage receipt, it could not have been validly executed on un-stamped papers and it cannot take effect without due registration. This document is not put to use for enforcing any

right as a mortgage as such, nor is there a claim for redemption under Order 34 Rule 1 CPC. The defendants were merely trying to use it for a collateral purpose namely the character of possession of the plaintiff and trying to dispel the contention that the plaintiff was in possession of the property under this agreement. It is quite possible that the contention given by the defendant is not true and the plaintiff has a right to establish that such a contention that the plaintiff was put in possession of the property only under the agreement of sale and not through an instrument called as mortgage receipt. While the mortgage even for one rupee would require registration and the document which is unregistered could not be used as a mortgage document to sue for redemption, a suit for recovery of possession of property cannot be defeated, if any reliance is made by a party that the possession is not relatable to an agreement

or any other transaction, but it was related only to a transaction evidencing a debt."

7. He also relied on the decision in V.K.JOHN v. W.S.SEETHARAM AND OTHERS (2009 [2]L.W 460), wherein it has been held thus:

"12.Considering the above said decision of the Apex Court and the consistent view of this Court that in a situation where the documents of the disputed nature, involving non-registration and absence of stamp duty, are coming up before the Court, the Court shall admit them in evidence subject to proof and relevancy and then, to decide the matter at the time of hearing the case and to render the judgment as per the settled legal principles.

13.In such view of the matter, this Court is also of the view that the document assailed, namely unregistered sale deed has to be received at this stage and the respondents are at liberty to object it at the time of marking through defendants and the Court below shall

*decide the legal enforceability of the document
at the time of final hearing of the case."*

8. The learned counsel for the respondent/plaintiff vehemently opposed the contention made by the learned counsel for the petitioner contending that allowing the petition will create a multiplicity of legal proceedings and again there will be another interlocutory application and another revision petition.

9. The learned counsel for the respondent further contended that since the document is an unregistered one, it is not at all admissible in evidence and the same cannot be allowed to file under the provisions of the Indian Registration Act. Hence, the civil revision petition is liable to be dismissed.

10. Considering the facts and circumstances of the case, this Court is of the considered view that filing an application or a revision petition is a right available to the respective parties and the same cannot be denied and the contention made by the learned for the respondent cannot be accepted on merits.

11. The contention of the learned counsel for the revision petitioner that the right of filing of the additional documents cannot be denied at this stage and the said documents have to be received. The mere receiving of the documents will not give any right or title to the respective parties in the suit. Hence, this Court is of the considered view that such a right available is granted to all the parties and marking of the document and its admissibility is the subject matter of adjudication by the trial Court.

12. In such circumstances, this Court is inclined to set aside the order dated 04.09.2010 passed by the learned II Additional District Munsif, Coimbatore in I.A.No.294 of 2010 in O.S.No.1817 of 2007.

13. In the result, order dated 04.09.2010 passed in I.A.No.294 of 2010 in O.S.No.1817 of 2007 by the learned II Additional District Munsif, Coimbatore is set aside and the civil revision petition is allowed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

14. At this juncture, the learned counsel for both sides submitted that the suit in O.S.No.1817 of 2007 was filed ten years ago and the

suit itself is in the part-heard stage and hence, they prayed for early disposal of the suit.

15. Taking note of the fact that the suit is pending for ten years, the learned II Additional District Munsif, Coimbatore is directed to take up the suit for final disposal and dispose of the same as early as possible preferably within a period of six months from the date of receipt of a copy of this order.

07.10.2016

Index:Yes/No
Internet:Yes/No

To

The learned II Additional
District Munsif,
Coimbatore.

S.M.SUBRAMANIAM.J

cla

C.R.P.(PD)No.2383 of 2012

07.10.2016