

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **02.12.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

**C.R.P.(P.D.) Nos.3646, 3647 and 3623 of 2016 and
CMP.No.18390 of 2016 in CRP No.3623 of 2016**

K.Kumar

...Petitioner in all petitions

versus

1.The Commissioner,
Tambaram Municipality,
Kancheepuram District.

2.D.Vembuli

3.B.Ravi

4.K.Ranganathan

5.K.Varatharajulu

6.S.D.Gandhi

7.K.Elumalai

8.K.Krishnamurthi

9.S.Moses

10.D.Elumalai

11.M.B.Narayanamoorthi

12.D.Srinivasan

13.D.Senthilkumar

14.C.Ramachandran

15.P.S.Durai

16.E.Kumar

...Respondents in all petitions

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 07.11.2016 passed by the learned District Munsif in I.A.Nos.1095, 1099 and 1094 of 2016 respectively in O.S.No.139 of 2009.

For Petitioner : Mr.Ravikumar Paul for
M/s.Paul and Paul

For Respondents : Mr.P.Srinivas for R1
Mr.M.Vijay Anand for R2 to R16

COMMON ORDER

The petitioner, who is the plaintiff in O.S.No.139 of 2009 filed three interlocutory applications before the learned District Munsif, Tambaram, in I.A.Nos.1095, 1099 and 1094 of 2016 to recall P.W.1, to condone the delay in filing the documents and to re-open the case respectively.

The Facts

2. The petitioner wanted to reopen the case for marking a document, which is in the nature of an extract of Town Survey stated to have been issued by the Commissioner of Tambaram Municipality to Mrs.Kaliammal.

3. The learned District Munsif, Tambaram, dismissed all the three applications, by common order dated 7 November 2016. Feeling aggrieved, the unsuccessful petitioner in the interlocutory applications is before this Court.

Submissions

4. The learned counsel for the petitioner submitted that the document in question was available with the petitioner. However, it was omitted to be marked on his side. According to the learned counsel, when the counsel on record before the Trial Court was in the process of preparing arguments, he verified the document, which was available in records and having found its importance to prove the substantial contentions raised in the plaint, immediately filed the interlocutory applications. According to the learned counsel, the document was even produced before this Court earlier. The learned counsel contended that the Trial Court considered the evidentiary value of the document even before receiving the same and dismissed the applications filed by the petitioner.

5. The learned counsel for the respondents, on the other hand, while supporting the order passed by the learned Trial Judge contended that the petitioner managed to keep the suit pending for the past eight years. The petitioner blocked the way and as such, the local people are aggrieved. The action taken by the Tambaram Municipality to remove the encroachment was stopped by the petitioner by initiating the suit in O.S.No.139 of 2009. According the learned counsel, the first

respondent made it very clear that the document in question is a fabricated one. The Trial Court was therefore perfectly correct in dismissing the interlocutory applications.

Discussion

6. The petitioner filed a suit in O.S.No.139 of 2009 to injunct the first respondent herein from trespassing into the plaint schedule property and more particularly, to restrain them from interfering with his peaceful possession and enjoyment of the property. The suit was contested by the first respondent by filing written statement. Thereafter, the respondents 2 to 16 filed interlocutory applications before the Trial Court to implead them as parties. The Trial Court dismissed the application in I.A.No.130 of 2011. The order was set aside by this Court by order dated 09.06.2014 in CRP (PD) No.3066 of 2012. The respondents 2 to 16 were directed to be impleaded as parties to the civil suit in O.S.No.139 of 2009.

7. The second respondent, thereafter, filed written statement and contested the suit.

8. The Trial Court recorded the evidence of parties. Thereafter, the petitioner filed interlocutory applications primarily to produce the document in question.

9. Before the Trial Court, the petitioner contended that the first respondent issued a copy of the Town Survey Plan to Mrs.Kaliammal, his wife. Though it was in his possession, the same could not be produced earlier while examining him as P.W.1. The first respondent in the counter affidavit contended that the petitioner has manipulated the documents at a later stage of the suit and is trying to introduce a new case before the Trial Court. Therefore, it is clear that the first respondent disputed the document in question.

10. The document, which was produced along with the application in I.A.No.1099 of 2016 has already been produced by the petitioner before this Court in CRP (PD) No.3066 of 2012. Since a contention was taken by the learned counsel for the respondents 2 to 16 that the petitioner made certain materials changes in the Survey Plan and produced it before the Trial Court along with the application in I.A.No.1099 of 2016, I have summoned the entire records in CRP (PD) No.3066 of 2012. While perusing the material documents in CRP (PD)

No.3066 of 2012, it was found that the petitioner made a representation to the District Collector with a copy of the Survey Plan. The petitioner appears to have made certain colour markings in the plan so as to invite the attention of the District Collector. I am not here to decide as to whether the document in question is genuine or not. It is the look out of the Trial Court. However, the fact remains that the document was filed even earlier by the petitioner herein in CRP (PD) No.3066 of 2012.

11. The question that arises for consideration is whether the learned Trial Judge was correct in dismissing the interlocutory applications for the reasons set out in the common order under challenge before this Court.

12. The learned District Munsif was expected to consider the question as to whether the petitioner has made out a case for reopening the matter for the purpose of recalling P.W.1 and to mark the document. The learned Judge even without receiving the document made sweeping observations with regard to the merits of the case and the evidentiary value of the document sought to be produced by the petitioner. The learned Judge was not correct in making such

observations with regard to the evidentiary value of the document without actually marking it.

13. There is no dispute that the petitioner was in possession of the document even when the civil revision petition was pending before this Court in CRP (PD) No.3066 of 2012. The petitioner for reasons best known to him failed to produce the document before the Trial Court. The document is stated to be the Town Survey Register Extract issued by the Commissioner, Tambaram Municipality to Mrs.Kaliammal. The genuineness, admissibility and evidentiary value of the said document are all matters to be looked into by the Trial Court. Such a stage has not arisen so far. The learned Trial Judge dismissed the applications primarily on the ground that the document in question is not a vital document and it was obtained after institution of the suit. The learned Trial Judge observed that patta cannot be relied on to decide the issue involved in the subject case. The Trial Judge further observed that the reasons given by the petitioner for his failure to mark the document earlier is not acceptable.

14. After hearing the learned counsel for the parties and on a perusal of the documents available on record, including the documents

produced in CRP (PD) No.3066 of 2012, I am of the view that the learned Judge was not correct in dismissing the interlocutory applications. In fact, there was no attempt made by the learned District Munsif to narrate the events that took place since 2009 and to indicate as to whether the petitioner was responsible for the delay in the disposal of the suit. I am therefore of the view that the petitioner should be given an opportunity to produce the document before the Trial Court.

15. In the result, the common order dated 3 November 2016 is set aside.

16. The learned District Munsif, Tambaram, is directed to post the suit for further evidence of P.W.1 on 7 December 2016. The petitioner shall appear before the Court on the said date of hearing. In case the petitioner failed to appear on the date indicated above, it is open to the Trial Court to close the evidence and post the matter for arguments. The learned Trial Judge is directed to take up the matter without granting adjournment. The petitioner shall be permitted to produce the document in question. The document would be marked after recording the objection made by the respondents and more particularly, the

Commissioner, Tambaram Municipality, in view of the contentions taken in the counter affidavit filed in I.A.No.1099 of 2016. The question of its genuineness, admissibility and evidentiary value shall also be decided by the learned Judge. In case, a request is made by the respondents to recall the defence witnesses, the same shall be entertained by the learned Trial Judge without there being a formal application. In such an event, the suit shall be posted within a period of two days after the completion of the evidence of P.W.1. Thereafter, the suit should be posted for arguments. The arguments should be completed by 13 December 2016.

17. I make it clear that I have not decided the genuineness of the document produced by the petitioner in I.A.No.1099 of 2016.

18. The learned District Munsif is further directed to dispose of the suit in O.S.No.139 of 2009 on merits and as per law, as expeditiously as possible, and in any case on or before 15 January 2017.

19. The Civil Revision Petitions are allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

02.12.2016

Index : Yes/No
svki

K.K.SASIDHARAN,J.
(svki)

To

The District Munsif Court,
Tambaram

C.R.P.(P.D.) Nos.3646, 3647 and
3623 of 2016

02.12.2016

<http://www.judis.nic.in>