

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.745 of 2016

&

C.M.P.No.4104 of 2016

N.C.Nachimuthu

... Petitioner

vs.

N.Palanisamy

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against fair and decretal order dated 04.01.2016 made in I.A.No.933 of 2015 in O.S.No.266 of 2009 on the file of the learned Sub-Court, Perundurai.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.S.Chandrasekaran for R1

ORDER

The sole respondent has filed a caveat. Notice of the Civil Revision Petition was served on the counsel for the sole respondent/caveator. The counsel for the respondent/caveator is also present.

2. The arguments advanced by Mr.N.Manokaran, learned counsel for the petitioner and by Mr.S.Chandrasekaran, learned counsel for the respondent are heard.

3. This revision under Article 227 of the Constitution of India arises out of an order of the trial Court dated 04.01.2016 made in I.A.No.933 of 2015 in O.S.No.266 of 2009 on the file of the Subordinate Judge, Perundurai. The above said suit was filed by the respondent herein against the petitioner in the revision and one M.Venkatesan arraying them as Defendants 1 and 2 respectively. The petitioner herein filed an earlier suit O.S.No.223 of 1999 on the file of the learned Principal Subordinate Judge, Erode for the relief of specific performance against the said Venkatesan based on an agreement for sale dated 10.02.1998. The said Venkatesan remained ex parte and the suit came to be decreed ex parte on 07.06.2000. Thereafter, an execution petition was filed and in the execution proceedings, sale deed dated 28.09.2005 came to be executed by the Court itself acting on behalf of the judgment debtor in accordance with the decree. Pursuant to the execution of the sale deed, possession was also taken through Court on 09.10.2006. Thereafter, the present suit came to be filed on the file of the District Munsif-cum-Judicial Magistrate,

perundurai on 18.10.2006 as O.S.No.27 of 2007 for a declaration that the decree passed in O.S.No.223 of 1999 is null and void and will not affect the title of the respondent herein/plaintiff and for a permanent injunction restraining the defendants therein from interfering with the alleged peaceful possession and enjoyment of the plaintiff in respect of the suit property. Subsequently, the suit was transferred to the file of Sub-Court, Perundurai on the question of jurisdiction and renumbered as O.S.No.266 of 2009.

4. The suit is contested by the revision petitioner alone and the above said Venkatesan, who figures as second defendant, remains ex parte. In the trial conducted by the trial Court, after the closure of the evidence on the side of the plaintiff, the first defendant, who is the petitioner in the present revision, led evidence through himself as PW1. Thereafter, he caused a witness summons to be issued to the above said Venkatesan (second defendant) to come and depose as a witness on behalf of the revision petitioner. On receipt of summons, the said Venkatesan appeared and his evidence in chief was recorded by the trial Court. The evidence in chief was not in the form of proof affidavit, since he was a witness brought to the Court on issuance of summons. The chief examination of DW2 concluded on 27.04.2015.

But, on the request of the counsel for the plaintiff, the case was adjourned to 08.06.2015 for cross-examination. On that date, the witness was present, but the counsel for the plaintiff was not prepared to cross-examine him. Hence, the case was adjourned to 10.06.2015. On 10.06.2015, the witness was absent. Thereafter, on 17.06.2015 and 26.06.2015, the subsequent dates of hearings, the witness DW2 was absent. Accordingly, the learned trial Judge, not only closed the first defendant's evidence, but also eschewed the evidence of DW2 already recorded and posted the matter for arguments. When the matter thus stood posted for arguments, the plaintiff filed an application I.A.No.570 of 2015 to recall PW1 for his re-examination and by virtue of an order passed in the said interlocutory application, PW1 was recalled and he was examined on 13.10.2015.

5. Thereafter, the revision petitioner/first defendant herein filed I.A.No.933 of 2015 on 03.12.2015. Though the order eschewing the evidence of DW2 and closing the evidence of the first defendant came to be passed on 26.03.2006 itself, the petitioner herein/first defendant kept quite for 6 months. The petition for re-opening the case for further evidence on the side of the first defendant came to be filed only in the first week of December 2015 after arguments were

elaborately heard on both sides. Further, the revision petitioner, besides failing to challenge the order eschewing the evidence of DW2, also failed to file a petition for re-calling such an order and praying for issuing summons to or taking coercive steps against DW2 for his appearance before the Court for being cross-examined. The revision petitioner has chosen to seek re-opening of the case for the purpose of cross-examining the very same person once again as a witness afresh.

6. The fact that the revision petitioner caused a delay of nearly 6 months after the closure of evidence and chose to file the petition for re-opening the case after advancing substantial arguments in the case, will show that the petitioner's intention is to prolong the case and fill up the lacuna, if possible.

7. The learned trial Judge, referring to the various docket orders in chronological manner, highlighted the inaction on the part of the revision petitioners and arrived at a correct conclusion that the petition was not bonafide and it was intended to drag on the case and to fill up the lacuna. Accordingly, the learned trial Judge, has not committed any error or mistake in disallowing the prayer made in the interlocutory application and dismissing the same.

This Court does not find any defect or infirmity in the said order dated 04.01.2016 made in I.A.No.933 of 2015 in O.S.No.266 of 2009. The revision fails and the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

09.03.2016

Index: Yes/No
Internet: yes
gpa

To

The Sub-Court
Perundurai

P.R.SHIVAKUMAR.J.,

gpa

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