

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.12.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.2805 of 2012
and
M.P.No.1 of 2012**

Rani

.. Petitioner

Vs.

1.Nedunchezian
2.Mookayi Ammal
3.Jayaraman
4.Amutha

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and final order of the Sub-Court, Kallakurichi, dated 08.09.2011, made in I.A.No.170 of 2010 in O.S.No.16 of 2009.

For Petitioner : Mr.S.Sounthar

For Respondents : Mr.Bharath Chakravarthy (for R1 & R3)

No Appearance (for R2 and R4)

ORDER

The revision petitioner herein filed a suit against the respondents herein in O.S.No.1 of 2006, on the file of the learned Principal District Munsif Court, Kallakurichi, for the relief of Declaration and Permanent Injunction. The respondents herein filed the written statement and contested the suit. After contest, the suit was dismissed by the learned District Munsif, Kallakurichi. As against that the revision petitioner has filed the Appeal suit in A.S.No.16 of 2009, on the file of the sub court, Kallakurichi. During the pendency of the appeal suit, the revision petitioner herein has filed a petition in I.A.No.170 of 2010, in A.S.No.16 of 2009, stating that the 1st item of the suit property is belonging to the Government. The Government assigned the property to one Mr.Perumalsamy who was the earlier owner of the revision petitioner and he was examined as witness on the side of the plaintiff. But the Court below has erroneously dismissed the suit without considering the evidence of the Perumalsamy. At the time of evidence, the said Perumalsamy did not file assignment order of the Government before the trail court. Hence the revision petitioner has filed application in I.A.No.170 of 2010 seeking to send for the assignment order from the Tahsildar Office.

2.The respondents herein filed counter to the said application and contended that before the trial court at the time of evidence the revision petitioner has filed the sale deed alone on his side as document and the revision petitioner herein did not file any document of assignment made by the Government. Further, the revision petitioner is having another way to apply certified copy of the document from the competent authority and after obtaining the same can be filed as document before the trial Court. But the revision petitioner herein has filed the send for application in the appeal suit is only to drag on the proceedings. After considering the arguments on both side, the learned Judge has dismissed the above said application by holding that the revision petitioner is having another way to apply the certified copy of the document from the competent authority, but the revision petitioner did not taken any steps to obtain the copy of the document from the authority. As against the order, the present revision petition is filed by the revision petitioner.

3.I heard Mr.S.Sounthar, learned counsel appearing for the petitioner and Mr.Bharath Chakravarthy, learned counsel appearing for the respondents 1 and 3.

4.The revision petitioner has filed the petition to send for the document from the revenue office. The document is the assignment order of the government granted in favour of the earlier owner of the revision petitioner. As per the assignment order, the revision petitioner has purchased the property from his earlier owner and he was examined as witness on the side of the plaintiff. But at the time of the evidence the vendor of the revision petitioner did not produce the assignment order issued by the government. Hence, the revision petitioner filed a petition to send for the assignment order. But the learned counsel for the respondents herein contended that the revision petitioner is having another way to obtain the copy of the document and to drag on the proceedings only the present application is filed.

5.But the revision petitioner's plaint averment is that he has purchased the property in the year 2005, before that his vendor was in possession of the suit property for more than 35 years. Hence, this Court could not direct the revision petitioner to apply certified copy of the assignment order from the revenue authorities. It is not easy way to obtain the document from the revenue officials. The poor litigant can't be asked to run from pillar to post. To render substantial justice,

this revision can be allowed with a direction to the lower appellate court to send for the document i.e assignment order relating to the suit survey number issued by the Government from the concerned Taluk Office, Kallakurichi and to proceed the suit accordingly.

6.In the result:

(a) this civil revision petition is allowed by setting aside the order in I.A.No.170 of 2010 in A.S.No.16 of 2009, dated 08.09.2011 on the file of the Sub Court, Kallakurichi;

(b) the trial Court is directed to send for the document viz., assignment order issued in the name of Perumalsamy relating to the suit survey No.175/1 from the Taluk Office of Kallakurichi within period of ten days from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

22.12.2016

Note:Issue order copy on 03.07.2017
Internet:Yes
Index:Yes

vs

To
The Subordinate Court,
Kallakurichi.

M.V.MURALIDARAN, J.

VS

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