

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.01.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.3964 of 2012
and M.P.No.1 of 2012

K.P.Kotteeswaran

.. Petitioner/Plaintiff

Vs.

1.Padma
2.N.Basker
3.M/S.Sea Hawk Housing Private Limited
Represented by its Managing Director
V.N.Devadass, No.333
Poonamallee High Road, Aminjikarai
Chennai-29.
4.The Sub-Registrar, Avadi
Sub-Registration Office, Avadi
Chennai-54.

.. Respondents/Defendants

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 12.06.2012 made in I.A.No.298 of 2012 in O.S.No.400 of 2007 on the file of the Additional District Munsif Court, Poonamallee.

For Petitioner : Mr.A.Palaniappan
R1, R2 and R4 : Served
For R3 : Mr.R.Murali

ORDER

Civil Revision Petition is filed against the fair and decreetal order dated 12.06.2012 made in I.A.No.298 of 2012 in O.S.No.400 of 2007 on the file of the Additional District Munsif Court, Poonamallee.

2.The revision petitioner herein as a plaintiff filed a suit in O.S.No.400 of 2007 for the following reliefs:

(i)for declaration that the sale deed dated 14.06.2007 in respect of A schedule property executed by the first defendant through the second defendant in favour of the third defendant is illegal, null and void, unenforceable in law and not binding on the plaintiff and the suit property;

(ii)for declaration that the sale deed dated 14.06.2007 in respect of B schedule property executed by the first defendant through the second defendant in favour of the third defendant as illegal, null and void unenforceable in law and not binding on the plaintiff and the suit property;

(iii)for permanent injunction restraining the defendants from alienating or encumbering the suit property;

(iv)for permanent injunction restraining the defendants from entering or trespassing into the suit property;

(v)for permanent injunction restraining the fourth defendant from registering any document presented by the 3rd defendant in respect of the suit property and other consequential reliefs.

3.The defendants 1 and 2 have filed a written statement and contesting the same. The third defendant has filed additional written statement. At the time of filing suit, only copies of sale deed dated 04.02.1993 and settlement deed dated 04.03.1985 alone have been filed by the plaintiff. During trial, the plaintiff/revision petitioner has filed an application in I.A.No.298 of 2012 under Order 7 Rule 14(3)(A) C.P.C. for production of registration copies of registered sale deed and settlement deed obtained from the Registration Department. The trial Court, after hearing both sides, dismissed the application, against which, the present revision has been preferred by the plaintiff.

4.Learned counsel for the revision petitioner/plaintiff submits that the settlement and sale deeds are title documents and those documents are handed over to the first defendant, who is the power

agent of the plaintiff vide power of attorney deeds dated 07.12.2005. Subsequently, they were cancelled on 30.04.2007. Since those documents are handed over to the first defendant, the plaintiff could not produce the originals and hence, he forced to file the secondary evidence. He has not filed the documents as secondary evidence along with the plaint at the time of filing suit. He further submits that now the plaintiff obtained Registration copy from the Registration Department and hence, those documents are necessary. But the trial Court without considering the above aspect erroneously dismissed the application. Therefore, he prayed for allowing the revision.

5. Resisting the same, learned counsel for the third defendant/third respondent submits that the revision petitioner did not assign any valid reason in the affidavit for production of those documents. He ought to have given a reason as to why he has not filed the originals or Registration copy from the Registration Department at the time of filing suit. The trial Court after considering the above aspects rightly dismissed the application. Hence, he prayed for dismissal of the revision.

6. Considered the rival submissions made on both sides and

perused the typed set of papers.

7.The revision petitioner herein as a plaintiff filed the suit for the aforestated reliefs. In the plaint, it was stated that the revision petitioner has purchased A schedule property through a registered sale deed dated 09.02.1993. He got B schedule property by way of settlement from his mother vide settlement deed dated 04.03.1985. Thereafter, the plaintiff executed four registered power of attorney deeds on 07.12.2005 in favour of first defendant to deal with the property mentioned in A and B schedule properties till the end of April 2007. Since the first defendant was trying to misuse the power of attorneys, the plaintiff has cancelled all the four power of attorney deeds on 30.04.2007 and the same has been informed to the first defendant. Further, it was stated that even though the plaintiff requested the first defendant, to return the documents, the first defendant has not to do so. Therefore, the plaintiff issued notice to the first defendant, with a direction not to deal with the suit property, since power of attorney deeds had already been cancelled and the said notice was returned unserved. Hence, the plaintiff has published the above said notice in one issue of "Malai Malar" on 25.07.2007. But later, the plaintiff came to know that the property has been sold, after cancellation of power of attorney. By

obtaining Encumbrance Certificate, then only, the plaintiff came to know about the sale deed and filed the suit for the above said reliefs.

8.The first defendant filed the written statement, which is adopted by the second defendant. The first defendant admitted the execution of power of attorney and its cancellation. After framing of issues and when the matter was posted for trial, the plaintiff has come forward with the present application for reception of documents.

9.In the list of documents filed along with the plaint, the documents have been marked as Document Nos.1 and 2. The nature of the documents were mentioned as 'Copy'. Document Nos. 3 to 10 were mentioned as certified copies. It is to be noted that xerox copies are not admissible in evidence. It is true, it is the duty of the revision petitioner/plaintiff to prove that as to why he has not filed those documents before the Court. Now it is appropriate to extract para-1 of the affidavit filed in support of the application, which reads as follows:

"1. I am the plaintiff in the above suit and petitioner herein. I submit that the documents filed herewith were omitted to be filed earlier. The non filing of the said document is neither willful nor wanton. I will be put to heavy and irreparable loss and serious hardship will be caused to me, if the documents filed herewith are not received in evidence."

10. It is well settled dictum of the Honourable Apex Court that laws are man made laws, for doing substantial justice, the Court has discretionary power to allow the application for reception of document. Those documents are not new to the first defendant and as he was the power agent of the plaintiff, he is well known that the documents are title documents of the plaintiff/revision petitioner. It is true, while letting secondary evidence, the plaintiff has to satisfy the ingredients of Section 65 of Evidence Act. However, before marking the document, he must satisfy the ingredients/conditions imposed in Section 65 of Evidence Act for non filing the originals before the Court. Then only, the plaintiff is entitled to mark the documents. This application is filed under Order 7 Rule 14(3)(A)

C.P.C. only for reception of additional document.

11. According to the plaintiff/revision petitioner, since he is not in a position to produce the originals of settlement and sale deeds as primary evidence, he has come forward with the application for reception of Registration copies of those documents as secondary evidence. In my opinion, the trial Court without considering the same, has erroneously dismissed the application. Therefore, the impugned order passed by the trial Court is liable to be set aside and it is hereby set aside. The Civil Revision Petition deserves to be allowed and it is hereby allowed.

12. In fine, the Civil Revision Petition stands allowed. The trial Court is directed to receive the documents subject to proof and relevancy. At request of learned counsel for respondent, the trial Court is directed to dispose of the suit within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

20.01.2016

Index: Yes/No

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R.MALA,J.

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To

The Additional District Munsif Court, Poonamallee.

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