

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2017

CORAM

THE HONOURABLE Ms. JUSTICE V.M.VELUMANI

CRP (PD) No.1529 of 2017
and CMP.No.7121 of 2017

1.Selvaraj
2.Kannammal
3.M.Ganesan

.. Petitioners

Vs

Kalavathy
Respondent

..

Prayer:- Civil Revision Petition filed under Section 227 of the Constitution of India, to set aside the order passed in I.A.No.1169 of 2016 in O.S.No.361 of 1998 dated 10.01.2017 on the file of the District Munsif Court, Alandur, by allowing this Civil Revision Petition.

For Petitioners : Mr.B.Vijay

ORDER

The petitioners have filed this Civil Revision Petition to set aside the order passed by the learned District Munsif Judge, Alandur, on 10.01.2017 in I.A.No.1169 of 2016 in O.S.No.361 of 1998.

2. The petitioners are the defendants. The respondent, as plaintiff filed a suit for declaration and permanent injunction in O.S.No.361 of 1998 on the file of the District Munsif Court, Alandur. The petitioners/defendants filed written statement on 09.12.2002, and are contesting the suit. The trial commenced and the respondent/plaintiff's side evidence was closed. The petitioner/defendants' let in evidence and subsequently they filed an application to re-open the case, and to let in further evidence of D.W.2. The said applications were allowed. Accordingly, D.W.2 was examined in chief and was also cross-examined. The evidence on behalf of the parties were closed. The learned counsel for the respondent/plaintiff advanced argument on his behalf. The suit was posted for arguments on behalf of the petitioners/defendants. At that juncture, the petitioners/defendants filed I.A.No.1169 of 2016 in O.S.No.361 of 1998, to issue witness summons to the Executive Officer, Pozhichalur Town Panchayat, Pozhichalur to examine him as DW3 on his side.

3. According to the petitioners/defendants, they wanted to examine one more witness, i.e., The Executive Officer, Pozhichalur Town Panchayat, Pozhichalur as DW.3, to prove their case. The respondent/plaintiff filed counter affidavit and opposed the said

application and submitted that the suit is of the year 1998 and the petitioners have filed this application only to drag on the proceedings.

4. Considering the averments made in the affidavit, counter affidavit and on perusing of the materials on record, the learned Judge has dismissed the application holding that the petitioners have not given any reason as to why they wanted to examine the official witness by issuing summons to him. Even the petitioners/defendants have not stated whether they wanted to summon the witness for oral evidence or for production of documents. It was even observed in the order that the application was filed at a belated stage, that too, when the suit was reserved for judgment. Since no valid reason was putforth by the petitioners in I.A.No.1169 of 2016, the learned Judge has held that when the application is lacking details to establish the necessity of issuance of summons and that too, it was filed at the final stage of the suit, it is liable to be dismissed and accordingly, dismissed the said application. Against the dismissal of the said application, the petitioners have filed the present Civil Revision Petition.

5. Heard the learned counsel appearing for the petitioners.

6. The grievance of the petitioners is that the learned Judge have not considered the fact that the petitioners are entitled to let in evidence to prove the case that they are in lawful possession of the property. The petitioners/defendants filed I.A.No.1169 of 2016, to issue summons to the official witness, who had assessed the property and to provide property tax details, which would establish that they are in lawful possession of the property. It is also contended that the trial Court has denied opportunity to the petitioners to let in further evidence to prove their case. Hence, according to the petitioners, the learned Judge has erroneously dismissed the application on technical grounds. The learned counsel for the petitioners placed reliance on the judgment of the High Court of Andhra Pradesh, reported in **[AIR 1973 AP 309] Gopala Krishna Murthy Vs. B.Ramachander Rao and Others.**

7. On perusal of the material records, it is seen that the suit is of the year 1998 and the petitioners/defendants have filed the written statement on 09.12.2002. After completion of evidence let in by both the parties and the same was closed and when the suit was posted for arguments, at that time, the petitioners/defendants filed a petition to re-open the case and to

recall D.W.2 for further evidence. The said applications were allowed and D.W.2 was recalled and further examined. Even at that time, the petitioners have not filed application to issue summons to the Executive Officer. Only after advancement of arguments on behalf of the respondent, the petitioners have come out with an application in I.A.No.1169 of 2016. It is evident from the order passed by the learned Judge in I.A.No.1169 of 2016 that the petitioners have not even stated as to whether they wanted to issue witness summons to the official, either to record oral evidence or for production of documents, and even no particulars were given with regard to the documents that are required to be produced by the officials. The suit is posted for judgment and at that final stage, the petitioners/defendants have come out with the said application in I.A.No.1169 of 2016, to examine the Executive Officer of Town Panchayat, Pozhichalur as D.W.3.

8. The learned trial Judge has appreciated all these facts and dismissed the application by giving cogent and valid reasons. In the said circumstances, there is no irregularity or illegality in the order dated 10.01.2017 passed by learned Principal District Munsif, Alandur in I.A.No.1169 of 2016 in O.S.No.361 of 1998, warranting interference by this Court. Further, this Court is of the view that the judgment relied on by the learned counsel for the petitioner is

not applicable to the facts of the present case.

9. In the result, this Civil Revision Petition is dismissed.
No costs. Consequently, connected miscellaneous petition is closed.

26.04.2017

ds

Note : Issue order copy on 27.04.2016

Speaking order/Non-speaking order
Index : Yes/No

To:

The Principal District Munsif Court,
Alandur.

V.M.VELUMANI,J

ds

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