

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2017

CORAM

THE HONOURABLE Ms. JUSTICE. V.M.VELUMANI

CRP (PD)No.486 of 2017

and

C.M.P.No.2440 of 2017

V.N.Sekar

... Petitioner

..Vs..

G.Ayub Khan

... Respondent

Prayer:- Civil Revision Petition filed under Article 227 of Constitution of India, against fair & Decretal order of the XVI Additional Judge, City Civil Court, Chennai passed in I.A.No.9666/16 in O.S.No.7820/12, dated 08.12.2016.

For Petitioner : Mr.C.T.Mohan

For Respondent : Mr.K.V.Sundararaju

ORDER

This Civil Revision Petition has been filed against fair & Decretal order of the XVI Additional Judge, City Civil Court, Chennai passed in I.A.No.9666/16 in O.S.No.7820/12, dated 08.12.2016.

2. The petitioner is the plaintiff and the respondent is the defendant in O.S.No.7829 of 2012 on the file of the XVI Additional Judge, City Civil Court, Chennai. The petitioner filed a suit for declaration of title in respect of

'B' schedule property and for Permanent Injunction, restraining the respondent from interfering with 'B' schedule property and for mandatory injunction, directing the respondent to remove three AC boxes fixed on the western side of the defendant wall projecting into the B schedule property. The respondent filed written statement in the month of August 2013 and is contesting the suit and after framing issues; trial commenced.

3. The respondent has filed written statement and denied the averments that the petitioner is the owner of the B schedule property. On the other hand, the respondent is the owner of the property measuring in S.No.1163 and Re.Survey No.2929/1 and he is the absolute owner of the property without any interference from the date of his purchase and before that his predecessors in title were in absolute possession of the same.

4. The petitioner examined in chief as P.W.1 and marked documents. When the suit was posted for cross examination, the petitioner filed I.A.No.9666 of 2016 under order 6 Rule 17 C.P.C to permit the petitioner to add present S.No.2929/22 in the B schedule property.

5. According to the petitioner after denial of the title by the respondent, he purchased the property of 2573 from the original owner Pappammal by the deed of sale deed dated 2.5.2013.

6. The respondent has filed counter and opposed the said application on

the ground that purchase by the petitioner is subsequent to the filing of the suit and petitioner has come out with present application, after commencing of trial. The learned Judge dismissed the application holding that the petitioner has purchased the property after filing of the suit by sale deed dated 2.5.2013 and has not given any reason for filing the application belatedly.

7. Against the order of dismissal dated 08.12.2016 made in I.A.No.9666 of 2016 in O.S.No.7820 of 2012, the present Civil Revision Petition is filed.

8. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials on record.

9. The petitioner is claiming title over the B schedule property and seeks permanent injunction and for mandatory injunction. The respondent denied the title of the petitioner and claimed that he is the owner of the property and he is in possession and enjoyment of the property. The amendment sought for by the petitioner is to include the S.No.2929/22 in B schedule property as per the sale deed dated 2.5.2013. The said sale deed is subsequent to the filing of the suit. The learned Judge, considering the date of purchase by the petitioner held that, the petitioner was not the owner of the property on the date of filing of the suit and also held that whether the petitioner or the respondent are the owner of the property can be decided only after conclusion of the trial.

V.M.VELUMANI, J.,

nvi

10.Further, it is seen that the petitioner has filed application for amendment after commencing of the trial; the petitioner has not stated that inspite of due diligence, he would not have filed application for amendment before commencement of trial. For the above reasons, I hold that there is no irregularity in the order warranting interference by this Court.

11. With the above observation, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

19.06.2017

Index : Yes/No
Internet: Yes/No

To
XVI Additional Judge, City Civil Court, Chennai

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