

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.1562 & 1563 of 2003
C.M.P.No.16676 of 2003

1. Athayammal
2. Senthil Kumar
3. Muthu

.. Petitioners in
both the C.R.Ps

Vs.

Athiappan

.. Respondent in
both the C.R.Ps

PRAYER in both the C.R.Ps: Civil Revision Petitions filed under Section 115 of C.P.C., against the fair and decreetal orders dated 22.08.2003 made in I.A.Nos.66 & 67 of 2000 in A.S.No.9 of 1997 on the file of Sub Court, Attur.

For Petitioners : M/s.P.Veena
For Respondent : Mr.P.Jagadeesen

ORDER

These Civil Revision Petitions have been filed under Section 115 of C.P.C., against the fair and decreetal orders dated 22.08.2003 made in I.A.Nos. 66 & 67 of 2000 in A.S.No.9 of 1997 on the file of Sub Court, Attur.

2. The issues involved in both the Civil Revision Petitions are interlinked and therefore, disposed of by this common order.

3. According to the respondent, originally, the property in question belonged to one Kandappa Goundar, who sold the property to his wife Periakka. Subsequently, Periakka settled the property on her son, Periasami. After such settlement, both Periakka and Periasami left the village and their whereabouts were not known for more than the statutory period. As per law, they were presumed to be dead. The respondent purchased the property from Kandappa Goundar, the father, who claimed to be the legal heir of Periasami. Subsequently, Periakka came to the village and she sold the property to the first petitioner. The respondent filed O.S.No.241 of 1987, claiming the title based on the purchase from the father, against the 1st petitioner, who

contested the suit. The said suit was dismissed, as mother of Periasami was the legal heir.

4. Aggrieved against the said judgment passed in O.S.No.241 of 1987, the respondent filed an appeal in A.S.No.27 of 1989. While the said appeal was pending, Periasami came to the village. The respondent purchased the suit property from Periasami. Subsequently, the A.S.No.27 of 1989 was also dismissed. According to the respondent, he filed Second Appeal with application to condone the delay.

5. The first petitioner and Kandappa Goundar filed O.S.No.273 of 1992 on the file of District Munsif Court, Attur, against the respondent for possession of the suit property and for mesne profit. The respondent filed written statement and he did not mention his purchase from Periasami in the written statement. According to him, in view of the filing of Second Appeal with condonation of delay, he did not mention the same. Subsequently, on advice, he filed application in I.A.No.1036 of 1995 for filing additional written statement. The said application was dismissed. Subsequently, the suit filed by the petitioners, O.S.No.273 of 1992 was decreed by the judgment and decree dated 08.09.1995.

6. Aggrieved against the said judgment and decree, the respondent filed A.S.No.9 of 1997 on the file of Sub Court, Attur. Pending appeal, Kandappa Goundar died. The petitioners 2 and 3 were impleaded as respondents 3 and 4 in the appeal in A.S.No.9 of 1997. The respondent filed I.A.No.66 of 2000 to call for the Impression Book of the year 1972 kept in the Sub Registrar Office, Attur, where the signature and Left Thumb Impression of the executant and claimants of documents presented for registration and taken and to send the same to Government Forensic Laboratory to be compared with disputed signature of Periasami in the sale deed dated 16.08.1990. The respondent also filed I.A.No.67 of 2000, seeking for a permission to file the additional written statement in the suit.

7. According to the respondent, the signature of Periasami in the settlement deed dated 23.02.1972 is to be called for and to be compared with the sale deed dated 16.03.1990. As far as the I.A.No.67 of 2000 is concerned, the respondent has stated that the Trial Court erroneously dismissed the I.A.No.1036 of 1995 in O.S.No.273 of 1992 and therefore, sought for permission to file the additional written statement.

8. The first petitioner filed counter affidavit on 28.11.2000 and opposed the said application. According to the petitioners, only to drag on the proceedings, the respondent has filed the above applications, I.A.No.1036 of 1995 filed in the Trial Court for the very same relief was dismissed and

respondent has not taken any further proceeding. The present application at the appellate stage is not maintainable and is devoid of merits. In the written statement, no objection was raised to dispute the title of the petitioners. In the circumstances, the application for comparing the signature in question does not arise and prayed for dismissal of the application.

9. The learned Judge, considering the averments in the affidavit, counter affidavit and materials on record, allowed the application on the ground that in order to give an opportunity to the respondent to prove his case and has awarded a cost of Rs.500/- in each application.

10. Against the two orders dated 22.08.2003, made in I.A.Nos.66 & 67 of 2000 in A.S.No.9 of 2007, the present two civil revision petitions have been filed by the petitioners.

11. Heard the learned counsel appearing on both the sides and perused the materials on record.

12. From the materials on record, it is seen that Periasami, who is the original owner of the property is alive and he has come to the village. Now, the learned counsel appearing for the respondent submitted that Periasami died on 01.01.1992. The respondent claims to have again purchased the suit property from Periasami. Earlier, the respondent has filed I.A.No.1036 of 1995 for filing additional written statement before the Trial Court. The said application was dismissed. The respondent has not taken any further proceeding to challenge the said order. In the circumstances, the said order has become final. For the very same relief, the respondent has filed I.A.No.67 of 2000 in the appeal.

13. The learned Judge failed to consider that earlier, the respondent has filed I.A.No.1036 of 1995 and the said application was dismissed in the Trial Court and that has become final. The petitioners have contended that the respondent did not dispute the title of the petitioners in the written statement and there is no necessity to compare the signature of Periasami. The learned Judge failed to consider that I.A.No.1036 of 1995 filed by respondent for filing additional written statement in Trial Court was dismissed and the said order became final. In view of the same, I.A.No.67 of 2000 for the very same relief is not maintainable in Appeal. Similarly, the learned Judge, failed to consider the contention of petitioners that respondent did not dispute the title of petitioners in the written statement. The only reason given by the learned Judge for allowing both the application is that the respondent must be given an opportunity to prove his case. The said reason is not valid. The learned Judge failed to appreciate the averments in

the counter affidavit in proper perspective and failed to exercise the powers conferred to him properly. In view of the same, the learned Judge committed an irregularity in allowing the applications which are liable to be set aside.

14. In the result, the civil revision petitions are allowed. No costs. Consequently, the connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gsa

To
The Subordinate Judge, Attur.

+1 cc to Mr.P.Jagadeesan Advocate sr 50807
+1 cc to Mr.T.R.Rajaraman Advocate sr 50401

C.R.P. (NPD) Nos.1562 & 1563 of 2003
C.M.P.No.16676 of 2003

pa(co)
aa06/09/2017

सत्यमेव जयते

WEB COPY