

]IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **06.06.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(N.P.D.)Nos. 3104 and 3105 of 2013
and
M.P.No.1 of 2013

Periyasamy

...Petitioner in both the CRPs

Vs

Ramasamy

...Respondent in both the CRPs

Prayer:- Civil Revision Petitions filed under Article 227 of Constitution of India, against the order and decretal order dated 11.03.2013 made in I.A.Nos.31 and 61 of 2012 in A.S.No.24 of 2011 on the file of the Subordinate Court, Rasipuram.

For Petitioner : Mr.T.Dhanyakumar

For Respondent : No Appearance

COMMON ORDER

These two Civil Revision Petitions are directed against the common order dated 11 March, 2013 in I.A.Nos.31 and 61 of 2012, dismissing the applications filed by the petitioner to receive additional

documents and permit him to file additional written statement.

2. Heard the learned counsel for the petitioner. None appeared on behalf of the respondent.

3. The respondent filed a suit for injunction before the District Munsif Court, Rasipuram in O.S.No.65 of 2008. The petitioner was the sole defendant in the said suit. The Trial Court decreed the suit as prayed for. The petitioner filed statutory appeal in A.S.No.24 of 2011 before the Subordinate Court, Rasipuram. Before the Sub-Court, Rasipuram, the petitioner filed two applications. I.A.No.31 of 2012 was filed to receive additional documents. Similarly, I.A.No.61 of 2012 was filed to receive additional written statement.

4. The Trial Court dismissed both the applications primarily on the ground that sufficient reasons were not given by the petitioner to receive the documents at the appellate stage. The common order is under challenge at the instance of the unsuccessful petitioner.

5. The petitioner filed two documents. The first document is stated to be the title deed executed in favour of Tmt.Pachiammal.

Tmt.Pachiammal is none other than the grand mother of the petitioner. She purchased the property from Ayyasamy Udayar. The respondent also purchased the property from the same vendor. It was to prove the factum of purchase of the property by Tmt.Pachiammal, the petitioner filed the title deed. Similarly, the petitioner filed the Will executed by Tmt.Pachiammal in his favour to show that he is entitled to the property in question.

6. The petitioner filed another application in I.A.No.61 of 2012 to receive additional written statement. There was no indication in the affidavit filed in support of the said application as to why the petitioner failed to disclose the details in the original written statement. I am therefore of the view that the Trial Court was correct in dismissing the application in I.A.No.61 of 2012.

7. The Trial Court dismissed the application in I.A.No.31 of 2012 even before taking up the first appeal in A.S.No.24 of 2011.

8. Order 41 Rule 27 of the Code of Civil Procedure permits production of additional evidence before the Appellate Court. Normally, such application has to be taken along with the appeal. In the subject

case, the learned Appellate Judge took up the application even before posting the appeal for final hearing and rejected it on the ground that proper reasons were not given.

9. The first document in question is a title deed. Since the property was purchased by the predecessor-in-interest of the petitioner and the respondent from a common vendor, it cannot be said that there is no relevance to the document in question. In any case, the stage has not arisen to reject the application filed by the petitioner for producing additional evidence. I am therefore of the view that the matter requires fresh consideration by the learned Subordinate Judge. The order dated 11 March 2013 in I.A.No.31 of 2012 is set aside. The application in I.A.No.31 of 2012 is restored to file. The learned Subordinate Judge, Rasipuram is directed to take up the said application and dispose of the same along with the appeal in A.S.No.24 of 2011. The order dated 11 March 2013 in I.A.No.61 of 2012 is confirmed.

10. In the result, C.R.P.No.3104 of 2013 is allowed and C.R.P. No.3105 of 2013 is dismissed. No Costs. Consequently connected miscellaneous petition is closed.

06.06.2017

svki/si

To

The Subordinate Court,
Rasipuram.

K.K.SASIDHARAN,J.

si

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