

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.02.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.4142 of 2012
and
M.P.No.1 of 2012**

C.Sivasubramaniam

.. Petitioner

Vs.

1.Dhanapusam
C.Arokiasami (Died)
2.A.Rajkumar
3.A.Tamilarasi
4.A.Prabu
5.A.Anbarasu
6.A.Raja Babu
7.A.Anbzhagan
8.A.Pavaladevi

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Petition and Order dated 29.10.2012 made in I.A.(CFR)No.3837 of 2012 in O.S.No.35 of 2010 on the file of the Subordinate Judge's Court, Perundurai.

For Petitioner : Mr.R.Krishna Prasad
for M/s.Sarvabhauman Associates

For Respondents : Mr.V.S.Kesavan

ORDER

This Civil Revision Petition is directed against a Docket Order of dismissal dated 29.10.2012 made by the learned Sub Judge, Perundurai rejecting the application filed by the revision petitioner to reopen the evidence on his side to adduce further evidence on his behalf.

2.The revision petitioner herein is the plaintiff in the above suit which was filed for recovery of advance amount due on the suit agreement.

3.According to revision petitioner, he as vendor entered a sale agreement in respect of a piece of land belonging to the respondent/ vendee, vide Document No.1, Sale Agreement dated 23.01.1995 filed under order VII, Rule 14 of CPC along with the plaint.

4.It is revision petitioner's case that despite receipt of advance amount and a further payment towards part of balance sale consideration, the respondents evaded to honor the sale agreement by

executing the sale deed in line with sale agreement by receiving balance sale consideration.

5. Whereas in the meantime revision petitioner found that the respondents by defrauding him had alienated the said properties to some third party. In such circumstance, it is virtually impossible for him to get a sale deed executed in respect of very same properties alienated to third parties; he filed the above suit for recovery of advance amount.

6. In the said suit it is seen that the respondents have filed their written statement resisting the claim of the revision petitioner as unsustainable contending that it was the revision petitioner whom failed to pay the sale consideration within stipulated time.

7. It is their yet another contention that the revision petitioner has lost his advance amount in lieu of his failure to pay balance consideration, which resulted in forfeiture of advance amount. According to the respondents, the revision petitioner is liable to pay liquidated damages.

8.The revision petitioner / plaintiff to substantiate his claim examined himself as PW1 and the suit remained posted for adducing evidence on behalf of defendants.

9.Whereupon the revision petitioner filed an application to reopen his side evidence seeking to record further evidence by examining one Mr.Raju who is one of the attesting witnesses to the above sale agreement said to have entered into between him and respondents.

10.The said application is found allowed by the learned Trial Judge on a conditional cost of Rs.5000/- to be paid to the respondents. The records disclose that revision petitioner has paid the cost imposed and has took out summons through trial Court for examination of attesting witness Raju.

11.It is significant to note that in pursuant of receipt of summon said Raju had appeared before the Trial Court on 16.08.2012 for his examination. However as on the said date the Learned Trial Judge was on leave, hence the suit remained adjourned to a subsequent date. As in the subsequent date the witness was absent, the Trial Court has

closed evidence of revision petitioner's /plaintiff's side and posted the suit for defendant's evidence.

12.In the said circumstance the revision petitioner has filed an application in I.A.(CFR)No.3827 of 2012 to reopen his evidence and to examine said Raju. The said application is found to be returned by Trial Court as not maintainable in view of earlier allowing of application in I.A.No.435 of 2012. Thereupon the revision petitioner by way of a Civil Revision Petition in CRP.No.513 of 2012 challenged the said return of the application and this Court by an order dated 25.09.2012 directed the trial Court to number the interlocutory application if the trial Court is convinced with explanation after hearing both the parties.

13.This Court further directed the Trial Court to hear the petition in open Court and pass orders after hearing the petitioner, whereas at the same time the Civil Revision Petition was dismissed holding that the proper procedure in case of return of an application is only to represent the same after complying with defects noted in the return paper and that such return of an application cannot be challenged by way of Civil Revision.

14.I heard Mr.R.Krishna Prasad for M/s.Sarvabhauman Associates appearing for the petitioner and Mr.V.S.Kesavan, learned counsel for the respondents and perused the records.

15.In the said factual backdrop it is found that the Trial Court has taken revision petitioner's application on 29.10.2007 and passed the impugned Docket order which is extracted hereunder:

"29.10.2012 called in open Court. The Hon'ble High Court gave direction to hear in open Court if convinced number the petition. On the side of the petitioner no proper reason to number the application. Hence the petition is rejected as not maintainable"

and thereby dismissed his application to adduce further evidence on his side.

16.On perusal of the impugned order it is needless to say that absolutely the Order of the Trial Court lack reasoning, points for consideration and its conclusion.

17.More so the impugned order does not reflect any discussion as to the facts, evidence and the contentions of either side. Whereas it barely stated that no proper reason to number the application. Thus

the impugned order do not hold good on scrutiny by this Court in the light of settled law that a decision must be supported by reasons.

18. At this juncture on perusal of case records though it is found that the execution of sale agreement is not disputed by parties, whereas the payment of time and such alleged payment is disputed and that there is a specific averment made in the plaint that a part of sale consideration was paid by him in the presence of attesters of sale agreement, there can be no doubt that evidence of Raju who happened to be one of the attesting witness will enable the Court to arrive at a proper decision.

19. It is noteworthy to find that Mr. V. Raju was also present on earlier occasion i.e. on 13.08.2012 for examination and that the presiding officer was on leave and the evidence could not be taken.

20. Therefore, I am unable to attribute any serious laches over revision petitioner and more particularly the application cannot be said to be a protracting technique as revision petitioner being the plaintiff seeks only for repayment of alleged advance and does not seek to enforce the sale agreement or does not intend to encumber with the pre-owned property of respondents said to have alienated to third party.

21. In view of the above discussion, I am of considered view that one more opportunity has to be given to the revision petitioner to adduce evidence on his side, however on terms of cost of Rs.1000/- to be paid by the revision petitioner to the respondent within a period of two weeks from the date of receipt of this order.

22. In the result:

(a) this civil revision petition is allowed by setting aside the order passed in I.A.(CFR)No.3837 of 2012 in O.S.No.35 of 2010, dated 29.10.2012, on the file of the learned Subordinate Judge, Perundurai;

(b) the trial Court is directed to send summon to Mr.Raju for appearance on a specific date within a period of 15 days from the date of receipt of a copy of this order;

(c) the petitioner is permitted to examine the said witness Raju on the said date, failing which, the trial Court is directed to proceed with the suit. No costs. Consequently, connected miscellaneous petition is closed.

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02.02.2017

Note: Issue order copy on 13.12.2018

Internet: Yes

Index: Yes

vs

To

The Sub Judge, Perundurai.

M.V.MURALIDARAN, J.

VS



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