



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.06.2017

(Reserved on 05.06.2017 and 08.06.2017)

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CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRP(PD) (MD) Nos.1054 and 1057 of 2017

and

CMP(MD) Nos.4669 and 4701 of 2017

1) M.Selvaraj

2) S.Prabhu

... Petitioners in CRP.1054/17

1) R.Thavamani

2) R.Moorthi

... Petitioners in CRP.1057/17

vs.

A.K.Ayyappan

... Respondent in both CRPs

Petitions filed under Article 227 of the Constitution of India, against the fair and decreetal order passed in I.A.Nos.559 and 504 of 2016 in O.S.No.356 of 2004 dated 18.11.2016 and 22.07.2016 on the file of the IV Additional District Judge, Madurai.

For Petitioners : Mr.M.Sridher in both petitions

For Respondent : Mr.D.Senthil in both petitions

COMMON ORDER

These revision petitions arise out of dismissal of the respective applications filed by the respective revision petitioners to re-open the case for further evidence and let in evidence on their behalf. The defendants 84 and 85 are the revision petitioners in CRP.1054/17 and defendants 26 and 27 are the revision petitioners in CRP.1057/17.

2.The chequered history of the case is as under:-

The suit property is originally owned by one Samayakone who has created a private trust. There had been a long standing dispute between the trustees right from O.S.No.114/1929 on the file of the Sub Court, Madurai and a scheme decree was also framed in the subsequent suit in O.S.No.217/1950. In the said scheme decree, there is a specific bar to alienate the trust property by any of the trustees. While so, the allegation in the present suit is that after the death of one Thirumulaimuthu Kone on 17.01.1986, the 1st defendant claiming herself as widow of Thirumulaimuthu Kone colluded with the 2nd defendant and other defendants and started alienating the trust property in violation of the scheme decree resulting in



filing of the present suit in O.S.No.834/1992 on the file of the Sub Court, Madurai, later transferred to the District Court, Madurai, and renumbered as O.S.No.356/2004 for declaration to declare the sale deeds executed by the defendants namely, 1 and 2 as null and void and recovery of possession.

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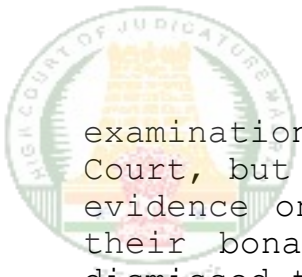
3.Initially, the suit was filed against nearly 64 defendants. Pending suit, some of them died and legal heirs were brought on record. The plaintiff has exonerated few defendants. After examination of witnesses on the side of the plaintiff, the plaintiff side witnesses was over by 23.09.2015 and after examining DW2, the Trial Court has closed the examination of defendants side on 29.01.2016 and posted the matter for arguments.

4.It appears from the records that the plaintiff has also submitted written arguments. At that juncture, 87th defendant filed an application before the Trial Court in I.A.No.221/2016 to call for certain records to prove the marriage of Thirumalaimuthu Kone with one Rukumani. The Trial Court after considering the narration of the case, held that this application has been filed just to drag on the proceedings after completion of examination of 87th defendant as DW2 on 21.08.2015 and 29.01.2016 and dismissed the application with costs.

5.Subsequently, another application I.A.No.504/2016 has been taken out by the defendants 26 and 27 stating that 63rd defendant have not let in evidence on their side and therefore, the defendants side evidence has to be re-opened. The Trial Court dismissed that application in I.A.No.504/2016 stating that defendants 26 and 27 have no locus standi to file re-open petition citing non examination of 63rd defendant who being the Executive Officer of Kallalagar Temple, has chosen not to examine himself. After dismissal of I.A.No.504/2016 filed by the defendants 26 and 27, the defendants 84 and 85 have taken out I.A.Nos.559 and 560/2016 with a similar prayer to re-open and receive additional document namely, the certified copy of the sale deed dated 22.03.1990 executed by the defendants 1 and 2 in favour of the petitioner's mother Selvarathi.

6.The Trial Court has dismissed I.A.Nos.559/2016 citing that Selvarathi has filed her written statement as early as 1996. The petitioners who are the legal representatives of the deceased Selvarathi were brought on record as early as 2011. They have not chosen to file this document for the past 20 years, but have filed the petition to re-open and receive the document after completion of trial and when the matter posted for arguments. So narrating the history of the case as well as pointing out the ulterior intention of the petitioners in I.A.No.504/2016 and I.A.No.559/2016 who are the revision petitioners in CRP.1054/2017, the Trial Court has dismissed their application to reopen the case.

7.The learned counsel appearing for the revision petitioners submitted that the petitioners were actively participating in the trial and even on the date when the matter was posted for



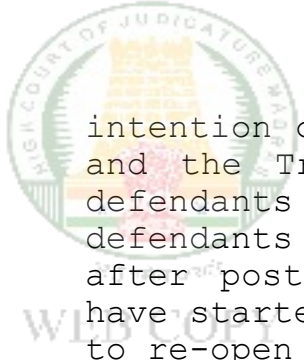
examination of defendants side witnesses, they were present in the Court, but due to boycott of Advocates, they were not able to let in evidence on their behalf, but filed their proof affidavit to prove their bona fide. Therefore, the Trial Court ought not to have dismissed their petition. It is specifically averred that the Court below directed the counsel to furnish list of witnesses who are to be examined and the same was also submitted. Despite memo being filed, the Court below dismissed the application to re-open the case for evidence.

8.To substantiate his plea, the learned counsel for the petitioner also produced the daily status of the case for the day 08.06.2016, wherein it is stated that defendants 26, 27, 30, 31, 56 to 58, 68, 84 and 85 present and other defendants called absent. For defendants side evidence adjourned to 15.06.2016.

9.On perusal of the impugned order passed by the Trial Court in I.A.No.559/2016 which is the subject matter of CRP.1054/2016, the Trial Court has clearly stated in paragraph 10 of its order as under:-

'10.Subsequently, due to boycott the defendants did not pursue the case. Finally on 8.6.2016 the case was adjourned to 15.6.2016 as "either for defendants side evidence or for closing defendants side evidence". Even on 15.6.2016 there was no representation, and again for giving one more chance the case was adjourned to 22.6.2016 by observing as follows: "No representation for the defendants, for closing the defendants side evidence and for arguments call on 22.6.2016. On 22.6.2016 too due to advocates boycott nobody appeared and this court was constrained to close the defendants' side evidence and the case was adjourned to 29.6.2016 for arguments. On 29.6.2016 plaintiff's side filed their written arguments and for the written arguments of defendant the case was again adjourned to 1.7.2016. On that day defendants 26 and 27 filed application in I.A.No.504/16 to reopen the defendants side evidence stating that the 63rd defendant namely, Kallalagher Temple was to let in evidence and that other witnesses have to be examined and therefore the petitioners/defendants side evidence had to be reopened. Observing that the petitioners/defendants 26 and 27 had filed that application on behalf of 63rd defendant Kallalagher Temple represented by the Executive Officer who is only a formal party and that the petitioners had filed that application in the name of the 63rd defendant in a misleading way without having any locus standi and consequently this court by an order dated 22.7.2016 dismissed that application also.'

10.It is very clear from the order of the Trial Court that there is only semblance of contesting the case, but the true



intention of the revision petitioners is to drag on the proceedings and the Trial Court after giving sufficient opportunity for the defendants to let in evidence on their behalf has at last closed the defendants side evidence and posted the matter for arguments. Only after posting the matter for arguments, the revision petitioners have started filing one application after another citing some reason to re-open the case.

11.The Trial Court has rightly said that if this sort of applications are entertained, there will be no end to the litigation which is already 20 years old. The defendants who are supposed to be vigilant to protect their right are deliberately delaying the process of justice under one pretext or another. Therefore, no further leniency is required.

12.This Court finds no error in the impugned orders passed by the Trial Court. Hence, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(AD-II)

/True Copy/

Sub Assistant Registrar

To

The IV Additional District Judge,
Madurai.

+2cc to M/s. M.SRIDHAR Advocate in SR. No.59713,59714

+2cc to M/s. D.SENTHIL Advocate in SR. No.59970,59971

NBI

JS/KP/SAR.1/22.06.2017/4P-6C

Pre-Delivery order made in
CRP(PD)(MD)Nos.1054 and 1057 of 2017
12.06.2017