

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 7196 of 2017

ORDER:

The present application came to be filed under Article 227 of the Constitution of India, aggrieved by the order dated 31.07.2017 passed in I.A.No. 2353 of 2017 in O.S.No. 1018 of 2008, on the file of the Principal Junior Civil Judge, Rajamahendravaram, wherein the suit filed by the petitioner/ plaintiff came to be dismissed.

2. In the suit, the petitioner/plaintiff sought for declaration and for mandatory injunction in respect of petition schedule property shown as ABEF marked in the petition plan, which is to an extent of 1½ feet width and 10 feet length; for removal of illegal constructions in the above marked petition plan of the schedule property and also for removal of slab projection towards western side of her property to an extent of ½ feet width south to north, which is an extent of 30 feet length at 1st floor level and also 2nd floor level and also for consequential injunction.

3. It is to be noted here that the suit was of the year 2008. When the present suit is posted for arguments, I.A.No. 2353 of 2017 came to be filed seeking to reopen the matter on the ground that the survey report in respect of the plaint schedule property, was not filed at the time of filing the suit. The present C.R.P is filed assailing the order in the I.A., on the ground that the lower court ought to have decided the two applications filed by the

petitioner for reopening the matter and for summoning the Municipal Commissioner independently.

4. From a perusal of the order passed in the I.A., it is clear that the matter was posted from 30.06.2017 to 05.07.2017 for adducing further evidence, and on 05.07.2017, there was no representation for the petitioner and as such, the Court closed the evidence and posted the same for arguments on 13.07.2017.

5. A counter came to be filed disputing the contents of the petition filed in support of the said I.A. It is stated in the counter that once the relief sought for by the petitioner for recovery of possession is dismissed, the petitioner cannot seek any further opportunity. It is further stated in the counter that though the survey report was available even prior to the filing of the suit, no steps were taken by the petitioner to produce the same, and only when the case is posted for arguments, the present applications for reopening the case and producing the evidence, came to be filed, only to drag on the matter.

6. Considering the rival submissions made, and after perusing the material on record, the trial court rejected the suit. Challenging the same, the present C.R.P came to be filed.

7. The learned counsel for the petitioner submits that though the survey was conducted prior to the filing of the suit, the report could not be filed at the time of filing of the suit, and that the said report is very much essential for a just decision of the case. He

submits that if the said report is not produced, great prejudice would be caused and the petitioner/plaintiff would be put to irreparable loss.

8. As seen from the record, the case is now posted for arguments. The impugned order itself indicates that time was given for the plaintiff to adduce further evidence on 30.06.2017 and 05.07.2017, and when he failed to turn up, the matter was posted to 13.07.2017 for arguments. Since then, the matter was being dragged on one pretext or the other.

9. A perusal of the pleadings of the petitioner/plaintiff show that the suit was filed seeking declaration and interim injunction, and the defendants are alleged to have forcibly trespassed into the petition schedule property on 24.11.2008. From the above, it is clear that the relief sought for by the petitioner is with regard adducing the evidence in respect of the event which took place prior to the encroachment dated 24.11.2008. Even otherwise, the fact remains that there was a survey report and that the petitioner had notice of the said report. But, for the reasons best known, no efforts were made by the petitioner to place the report on record till the case is posted for arguments. No explanation is forthcoming for the same.

10. It is also to be noticed that the present application came to be filed, after the case is posted for arguments. No reasons are given as to why no steps were taken by the petitioner to file the survey report at the earliest point of time.

11. In view of the above circumstances, and having regard to the judgments of this Court in LAXMIPRIYA EXPORTS (INDIA) PVT. LTD., AND OTHERS v. MALINGAM MILLS LTD. AND ANOTHER¹, wherein it is held that petitions for reopening the suit, receiving documents and recalling a witness should not be entertained after the case is posted for arguments, the relief sought for by the petitioner at a very belated stage, cannot be accepted.

12. In view of the ratio laid down by this Court in the judgment referred to above, and having regard to the conduct of the petitioner in filing this application after the case is posted for arguments, I am not inclined to accept the request of the petitioner.

13. Accordingly, C.R.P is rejected. Miscellaneous petitions pending, if any, shall stand closed. No costs.

JUSTICE C. PRAVEEN KUMAR

22.12.2017
DMG

¹ 2016 (2) ALT 537