

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2018

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

C.R.P(PD).Nos. 126, 127 of 2010

and C.R.P(PD).No. 176 of 2014

M.P.Nos. 1 of 2010 & 1 of 2014

N.Arunachalam

... Plaintiff/Petitioner/Petitioner in all CRPs

Vs.

1. L.Narayana Reddy

2. S.Manivannan

... Defendants/Respondents/Respondents
in all CRPs

Prayer in Civil Revision Petition 126 of 2010 ::

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decree dated 03.08.2009 made in I.A.No.502 of 2009 in O.S.No.12 of 2005 on the file of the Court of the District Munsif, Hosur by allowing this Civil Revision Petition.

Prayer in Civil Revision Petition 127 of 2010 ::

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decree dated 03.08.2009 made in I.A.No.501 of 2009 in O.S.No.12 of 2005 on the file of the Court of the District Munsif, Hosur by allowing this Civil Revision Petition.

Prayer in Civil Revision Petition 176 of 2014 ::

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decree dated 23.10.2009 made in I.A.No.694 of 2009 in O.S.No.12 of 2005 on the file of the Court of the District Munsif, Hosur by allowing this Civil Revision Petition.

For Petitioner : Mr.T. Dhanasekaran

For Respondents : No appearance for R1
Mr.V.Raghavachari for R2

C O M M O N O R D E R

These Civil Revision Petitions arises against the dismissal of the petitions filed by the plaintiff/petitioner herein for striking out the issues framed on 09.06.2005 in O.S. No.12 of 2005, pending on the file of the District Munsif, Hosur, recalling PW1's evidence and to reopen the application.

2. The brief facts which are necessary for appreciating the issue on hand is as follows:-

The petitioner has filed a suit for a declaration of his title to the suit schedule property and for an injunction restraining the respondents herein from interfering with his peaceful possession and enjoyment of the suit property. The petitioner claims title to the property on the basis of a sale agreement entered into between him and the respondents herein. The petitioner would contend that the first respondent herein had in pursuance of a sale agreement dated 16.09.1987 executed the sale deed in respect of his half share in the suit property by a registered sale deed dated 12.10.1988.

3. The second respondent after receiving the balance sale consideration had not only executed an unregistered lease deed dated 01.12.1989 but had also signed a panchayatar compromise agreement dated 21.09.1989. The petitioner would also contend that he had obtained a decree for injunction against the respondents in a suit in O.S.No.500 of 1989 on the file of the District Munsif Court, Hosur. On the basis of this Panchayatar compromise agreement, dated 21.09.1989, he had also contended that he had got the entire revenue records mutated in his name and that he is continuing in possession and enjoyment of the suit property. Since, the second respondent herein had made a propaganda in the village that he had not executed the sale deed, a cloud is created on the plaintiff's title to the suit property and consequently the suit came to be filed.

4. The first respondent remained exparte and it was the second respondent who had filed a written statement. In paragraph No.4 of the written statement, the second respondent had contended as follows:-

"4. Since this Defendant is an unnecessary party and had not claimed any rights over the suit property and the suit is filed vexatiously with false and incorrect statements, the same is liable to be

dismissed with full and compensatory cost, as gross abuse of process of the Court".

5. Thereafter, when the trial of the suit was concluded and the matter posted for arguments, the petitioner herein came forward with the impugned interlocutory applications for the relief stated therein, stating that in the written statement the second respondent has contended that he had no intentions to claim any rights over the suit property and was therefore an unnecessary party to the suit. Treating this as a case of admission, judgment could be delivered under the provisions of the Order 12 Rule 6 of C.P.C and therefore issues would not arise in the case, since the court had framed issues the same had to be struck off.

6. The petitioner had also taken up two other applications. I.A.No. 501 of 2009, for recalling P.W.1 for the purpose of marking the unregistered sale deed executed by the second respondent in his favour and I.A.No.502 of 2009 for leave to file his unregistered sale deed dated 03.05.1993. In both the applications the common averments had been made in that after the injunction suit was decreed in favour of the petitioner by way of a compromise, the second respondent had executed one panchayath muchalika and one oppantha muchalika in favour of the petitioner and that after the suit was posted for trial and when P.W.1's evidence is yet to be closed, the petitioner had come across the sale deed executed by the second respondent in his favour which has prompted the filing of these two petitions.

7. The second respondent filed a counter contending that the petition was only a ruse to protract the proceedings and that the petitioner is filing one petition after another. He would also contend that this sale deed does not find reference either in the plaint or in the oral evidence of the petitioner as D.W.1. The second respondent had denied the execution of the sale deed and had gone on to state that the sale deed dated 03.05.1993 was a forged document. He had also questioned the admissibility of the said document.

8. The second respondent filed a counter to the petition seeking to strike off the plaint by contending that the plaintiff had not till that date taken a sale deed from the second respondent and the agreement to sell would not create any right over the suit property. The petitioner was also estopped

from claiming adverse possession as there is no registered sale deed in his favour. Further the petitioners title to the suit property has not been declared in the suit in O.S.No.500 of 1989. Therefore, the court had the power to recast the issues after full trial and the plaintiff request for striking of issues was totally unwarranted.

9. The learned District Munsif, Hosur took up both these applications together and by an order dated 3rd August 2009 dismissed the said applications. The learned District Munsif observed that the petitioner had earlier taken up three Interlocutory applications in I.A. Nos.171 of 2007, 65 of 2009 and 66 of 2009, in which he had not made any mention about the sale deed. The learned District Munsif, Hosur, had also observed that there is no mention about this document in the plaint filed by the plaintiff and it is of the opinion that the petitioner had not given sufficient reasons for allowing the said application.

10. As regard I.A.No.694/2009, the learned District Munsif, after hearing both parties dismissed the application holding that the issues have been framed only after taking note of the pleadings and the application is being filed at this stage after the evidence was completed, it is not maintainable. With this view the learned District Munsif dismissed the application.

11. Heard the parties. The Counsel for the petitioner would argue that once the second respondent had admitted that he had no right to the suit property and considering the fact that the first respondent has also sold his share in the property, there was no necessity for the court to frame issues and that the suit could be decreed on the basis of the admission of the second respondent in paragraph No.4 of the written statement.

12. The learned Counsel Mr.V.Raghavachari, appearing for the second respondent would contend that the petitioner is placing his title on an unregistered document and he has to necessarily prove his case put forward by him.

13. On a perusal of the issues that have been framed by the learned District Munsif on 09.06.2005, it is seen that there is no issue that is framed with reference to the right of the second respondent to the suit property or otherwise, on the contrary the issues have been framed only on the basis of the

pleadings put forward by the petitioner in this plaint. It is also seen that this application has been taken out belatedly and that to when the suit has been posted for arguments. The striking of the issues does not in any manner advance the case of the plaintiff as he has to independently prove his right to the relief which has been claimed by him.

14. The perusal of the affidavits filed in support of the impugned petitions does not give out any valid reasons, warranting the filing of these petitions at such a belated stage, when the suit was posted for arguments and P.W.1 had already completed his examination. The statements that have been made in the affidavit in support of the above filed interlocutory applications does not find place in the plaint filed by the petitioner and brings out an entire new case.

15. As regards, the application to reopen and recall PW1's evidence, no doubt, a witness can be recalled at any stage of the suit, but however such a recall can be done only if sufficient cause has been put forward by the petitioner. In the instant case such sufficient cause has not been put forth by the petitioner. In these circumstances, I do not find any infirmity in the order of the learned District Munsif, Hosur.

16. In the result, the Civil Revision Petitions stand dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

सतरावेक जमाने
Sub Assistant Registrar

To

The Additional District Munsif,
Hosur.

+1cc to Mr.T. Dhanasekaran, advocate sr.no.45964

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nr 01/08/2018