

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2018

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

C.R.P.(PD)No.927 of 2018
and
C.M.P.No.5008 of 2018

S.D. Properties,
Represented by its Proprietor S. Dhanraj.

... Petitioner/Defendant

Vs.

Suseela Nagar Residents
Welfare Association - Kovilambakkam,
Represented by its Secretary.

... Respondent/Plaintiff

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India against fair and decretal order in I.A.No.972 of 2017 in O.S.No.917 of 2010, dated 24.11.2017 on the file of the Principal District Munsif Court, Alandur and to set aside the same.

For Petitioner : Mr.R. Bharath Kumar

For Respondent : Mr.S.Sai Shankar

O R D E R

The Civil Revision Petition has filed by the petitioner against fair and decretal order in I.A.No.972 of 2017 in O.S.No.917 of 2010, dated 24.11.2017 on the file of the Principal District Munsif Court, Alandur, and set aside the same.

2. The petitioner's application filed under Section 94(e) of Civil Procedure Code r/w Section 151 of CPC seeking for permission to take subpoena to the Tahsildar, Sholinganallur Taluk Office to bring certain Revenue documents which are in

their custody and to depose evidence for proper adjudication, came to be dismissed on the ground that the petitioner had not obtained the certified copies from the Revenue officials and that as required under Rule 76 of the Civil Rules of Practice, in view of the bar, the Tahsildar need not be summoned. It is the further finding of the trial Court that the said application has been filed at the fag end of the trial, which is an abuse of process of law and has been made only to drag on the proceedings. Challenging the same, the present Civil Revision Petition has been filed.

3. The learned counsel for the petitioner submitted that though there is a bar under Section 75(3) of the Civil Rules of Practice, since the petitioner had not applied for certified copies of the Revenue documents, his consequential second limb of prayer in the impugned application filed under Section 94(e) of CPC is for issuance of subpoena to Tahsildar in deposing evidence for proper adjudication.

4. Section 94(e) of CPC pertains to supplement rule proceedings, in order to prevent the ends of justice from being defeated and thereby, enables the Court to make such interlocutory orders for the purpose of securing the ends of justice. In the instant case, both the parties claim the suit property to be their own private properties. The Court will not involve itself with regard to the classification of the land in the Revenue records and such Revenue records would enable the Court to come to a logical conclusion. Nevertheless, in view of the bar under Rule 75(e) of Civil Rules of Practice, since the petitioner had not produced any document before the Court below evidencing that he had applied for the certified copy, I do not find any infirmity by the Trial Court, refusing to issue subpoena. As such, but the Court below may not have erred in coming to the conclusion that the application does not deserve consideration.

5. Nevertheless, it is submitted by the learned counsel for the petitioner that pursuant to the order passed in the impugned application, he had obtained certified copies of the Revenue documents and therefore, he sought for indulgence of this Court to mark the same through the concerned Tahsildar, Sholinganallur. The learned counsel for the petitioner had relied upon the judgment of this Court reported in 2007 (5) MLJ 338, [R. Ravi v. I.Pandiyarajan], and submitted that instead of directing for production of documents from the Tahsildar, the trial court can summon the witnesses to give oral evidence on the strength of the certified copies obtained by him.

6. I do not think that such a submission would cause prejudice to the respondent herein. Though the learned counsel for the respondent is right in relying upon Rule 75(3) of the

Civil Rules of Practice for the purpose of submitting that the trial court was right in rejecting the application, since the petitioner is now in possession of the certified copies, no prejudice would be caused to the respondent, if the Tahsildar is summoned for the purpose of deposing and marking of the certified copies. I am of the considered view that the ends of justice would be met if the certified copies of the documents are marked through the concerned Tahsildar to enable the Court for properly adjudicate the case.

7. In the light of the above observations made, the order in I.A.No.972 of 2017 in O.S.No.917 of 2010, dated 24.11.2017 passed by the learned Principal District Munsif Court, Alandur is set aside. Consequently, the learned Principal District Munsif, Alandur, is called upon to take up I.A.No.972 of 2017 in O.S.No.917 of 2010, on file and issue subpoena to the Tahsildar, Sholinganallur, for the purpose of letting in evidence. Such an exercise shall be completed within a period of one month from the date of receipt of a copy of this order.

8. With the above observations, the Civil Revision Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

msm

To

The Principal District Munsif,
Alandur, Chennai.

+1cc to Mr.R.Bharathkumar, Advocate SR.No.59381

C.R.P. (PD)No.927 of 2018

GMV (19/09/2018)