

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) No. 1147 of 2016

and

CMP. No. 20783 of 2016

Arjunsingh alias
Arjunsighraprohit

.. Petitioner

Vs.

1. G. Asinabi
2. The Branch Manager
Indian Overseas Bank
Thimmapuram
Krishnagiri District.

.. Respondents

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order of the learned Principal Subordinate Judge of Krishnagiri dated 25.11.2015 in I.A. No. 215 of 2014 in O.S. No. 64 of 2010.

For Petitioner : Mr.N.E.A.Dinesh

For Respondent-1 : Mr.D.Ramesh Kumar

For Respondent-2 : No appearance

ORDER

This Civil Revision Petition arises against the order of the learned Principal Subordinate Judge of Krishnagiri dated 25.11.2015 in I.A. No. 215 of 2014 in O.S. No. 64 of 2010.

2. The 1st respondent has filed the suit in O.S. No. 64 of 2010 for cancellation of the sale deed dated 11.12.2003 executed in favour of the petitioner and for permanent injunction. In the aforesaid suit, the 1st respondent also filed an application in I.A. No. 215 of 2014 under Order 6 Rule 17 of CPC to amend the plaint by deleting paragraph 7 of the original plaint and introducing a new paragraph 7 wherein it has been alleged that in December 2003 under the guise of applying for encumbrance certificate the petitioner obtained her signature in some papers and the same has been misused. In the year 2008, the 1st respondent found that the sale deed has been fraudulently obtained from her. The 1st respondent has registered new case for fraud and misrepresentation. The court below allowed the aforesaid application. Challenging the same, the present revision petition has been filed before this Court.

3. According to the petitioner, the said application has been filed at the pre-trial stage of the suit, filed for cancellation of the sale deed and for permanent injunction. The 1st respondent herein has executed the sale deed in favour of the petitioner and has filed the suit. While the aforesaid suit is pending, the instant application is filed by the 1st respondent to amend the plaint. The court below, without considering the objections raised by the petitioner has allowed the application. The learned counsel for the petitioner further submitted that allowing the application would change the nature and character of the suit and introduce a new plea in the suit. Therefore, the order of the court below allowing the said application, is liable to be set aside.

4. The learned counsel for the 1st respondent would submit that she has already stated in the affidavit that only by blackmailing the petitioner has obtained the sale deed. Ultimately, the alleged sale deed has been executed in coercion and subsequently the present application has been filed for amendment of the plaint. Since the circumstances under which the sale deed has been executed was properly explained, allowing the application would not introduce new facts of the case in the

suit. Therefore, the order of the court below is perfectly valid and the revision petition is liable to be dismissed.

5. Considered the submission of the learned counsel for both the parties and perused the material available on record.

6. At the time of admission of the civil revision petition, on 11.04.2016, interim stay was granted by this Court for a period of two weeks. Thereafter the stay was extended for a further period of two weeks. Since the matter was not listed, the interim stay was not extended further. Today, the civil revision petition has been posted for final disposal. At this stage, learned counsel for the 1st respondent would submit that pursuant to the application to amend the plaint, the court below has amended the plaint and the trial has commenced. The evidence on the plaintiff's side has been concluded and the suit has been posted for cross examination of the plaintiff. Therefore, the averment in the plaint that the 1st defendant has obtained the sale deed fraudulently has to be considered at the time of trial in the said suit. Hence, in view of the subsequent facts, this Court is not inclined to interfere with the

order passed by the court below and the order of the learned Principal Subordinate Judge of Krishnagiri dated 25.11.2015 in I.A. No. 215 of 2014 in O.S. No. 64 of 2010 is confirmed.

7. The Civil Revision Petition is dismissed, with liberty to the petitioner to raise his objections at the time of trial in the suit. Consequently, the connected Miscellaneous Petition is closed. No order as to costs.

14.03.2018

Index: Yes/ No
Speaking Order/Non Speaking Order

[Issue order copy on 03.05.2018]

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To
The Principal Subordinate Judge
Krishnagiri.

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D. KRISHNAKUMAR J.,

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