

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.02.2018

CORAM

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CIVIL REVISION PETITION(PD) No.1799 of 2016
and
C.M.P.No.9404 of 2016

P.Dharmichand .. Petitioner

vs

Mrs.Dilsath .. Respondent

The Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the judgment and decree dated 18.03.2016 passed in I.A.No.460 of 2016 in O.S.No.83 of 2008 on the file of the Sub Court, Nilgiris at Ootacamund.

For Petitioner ... Mr.R.Ganesh Kumar

For Respondent ... Mr.J.Franklin

ORDER

The Civil Revision Petition has been filed to set aside the judgment and decree dated 18.03.2016 passed in I.A.No.460 of 2016 in O.S.No.83 of 2008 on the file of the Sub Court, Nilgiris at Ootacamund.

2.The brief facts of the case are as follows:

The petitioner/plaintiff filed a suit in O.S.No.83 of 2008 against the respondent/defendant for delivery of possession on the file of the Sub Court, Nilgiris at Udhagamandalam. In the said suit, the trial Court passed the judgment and decree dated 31.12.2009. As against the said judgment and decree, the defendant preferred an appeal in A.S.No.8 of 2011 on the file of the District Court, Nilgiirs at Udhagamandalam. The learned appellate Judge, by judgment dated 02.08.2012 set aside the judgment and decree dated 31.12.2009 and remanded the suit to the trial Court directing him to dispose of the same after giving due opportunities to both sides by raising new issues. In such circumstances, the plaintiff filed I.A.No.460 of 2016 in O.S.No.83 of 2008 under Section 151 of CPC on the file of the Sub Court, Nilgiris at Udhagamandalam to reopen the case and to permit the petitioner's counsel to examine the plaintiff side witness and the said application was dismissed on 18.03.2016. Challenging the said order, the Civil Revision Petition has been filed by the petitioner.

WEB COPY

3.The learned counsel for the petitioner submitted that to prove the genuineness of Ex.A.2, power of attorney, the petitioner has to examine one Yasodha, wife of the petitioner/power of attorney holder,

as a further witness in the said suit and hence, the petitioner filed the present application. But, the Court below, without considering the averments made in the affidavit, erroneously dismissed the application. The learned counsel further submitted that if the application is allowed, no prejudice would be caused to the respondent. Therefore, the impugned order dated 18.03.2016 passed in I.A.No.460 of 2016 has to be set aside.

4.The learned counsel for the respondent submitted that the Court below, after considering the entire facts of the case, rightly dismissed the application on the ground that already opportunity has been given to the petitioner by allowing I.A.No.772 of 2012, but, he did not come forward to examine the witness and hence, one Ranjithkumar, notary public was examined as P.W.2 in respect of the said exhibit A.2 and cross examination was also over. Hence, the Civil Revision Petition is liable to be dismissed.

5.Heard, the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials available on record.

6. On a perusal of the records, it is necessary to examine the said Yasodha, the power of attorney holder and wife of the petitioner, to prove the genuineness of Ex.A.2. and if the application is allowed, no prejudice would be caused to the respondent. Further, in order to give an opportunity to the petitioner, this Court is inclined to allow the application.

7. Considering the facts and circumstances of the case, the submissions made by the learned counsel for both sides and considering the fact that the suit is of the year 2008, this Court has no hesitation to set aside the impugned order passed by the Court below and inclines to pass the following order:

"(i) The order dated 18.03.2016 passed in I.A.No.460 of 2016 in O.S.No.83 of 2008 on the file of the Sub Court, Nilgiris at Ootacamund is set aside.

(ii) The petitioner is permitted to examine and cross examine one Yasodha, the power of attorney holder of Ex.A.2. and wife of the petitioner.

(iii)The Sub-Court is directed to fix the date for examination of the said witness and further the parties are directed to cross examine the witness on the same date and both parties are undertake to co-operate with the trial Court to dispose of the suit without getting any adjournments.

(iv)After the evidence is completed, the Court below is directed to proceed with the case in accordance with law and dispose of the suit in O.S.No.83 of 2008 in accordance with law on or before 30.04.2018.

(v)The Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed."

28.02.2018

Speaking/Non Speaking order
Index: Yes/No.

cla
To
The Sub Court,
Nilgirais at Ootacamund.

D.KRISHNAKUMAR,J.

cla



C.R.P.(PD)No.1799 of 2016

WEB COPY

Date: 28.02.2018