



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.01.2018
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CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (PD) (MD) No.135 of 2018
and
C.M.P. (MD) No.577 of 2018

P.Gunasekaran : Petitioner/Petitioner / 5th defendant

Vs.

1.K.Natarajan : 1st Respondent/1st Respondent/Plaintiff
2.K.Thangasamy
3.K.Kasilingam
4.K.Raman : Respondents 2 to 4/Respondents 2 to 4/
Defendants 1, 3 & 4

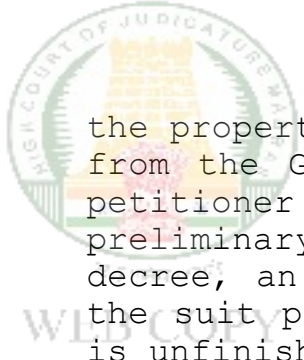
PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair Order and Decreetal Order dated 08.11.2017, passed in I.A.No.467 of 2017 in O.S.No.497 of 2007, on the file of the III Additional Subordinate Court, Madurai.

For Petitioner : Ms.K.Abiya

ORDER

This civil revision petition has been filed challenging the order, dated 08.11.2017, passed in I.A.No.467 of 2017, whereby and whereunder, the relief sought for by the revision petitioner / 5th defendant to summon the concerned staff through the District Collector, Madurai, to place the petition mentioned documents and to give evidence, was rejected.

2.0. The first respondent / plaintiff has filed the suit in O.S.No.497 of 2007 for partition against his brothers viz., the respondents 2 to 4 herein / defendants 1, 3 & 4 and K.Renganathan / 2nd defendant, and also the defendants 5 & 6, who are stated to be created documents along with the 2nd defendant for usurping the portion of the suit property. According to the revision petitioner / 5th defendant, in the year 1973, the suit property was orally partitioned between the plaintiff and the defendants 1 to 4 and the 2nd defendant sold his share in the suit property to the revision petitioner / 5th defendant on 11.02.1995 through a registered sale deed and from the date of purchase, the revision petitioner / 5th defendant has been in possession and enjoyment of



the property by constructing a Cinema Theatre and by getting license from the Government in the year 1996 to till date. The revision petitioner / 5th defendant remained *ex parte* in the suit. A preliminary decree was passed on 01.12.2008. For passing final decree, an Advocate Commissioner was appointed and after inspecting the suit property, he had also filed his report stating that there is unfinished four wall without roof.

2.1. While so, the revision petitioner / 5th defendant had filed a petition to set aside the *ex parte* order and the same was ordered and subsequently, he was examined as DW1. After the case was posted for argument, twice it was opened at the request of the revision petitioner / 5th defendant for producing additional witnesses and documents. While so, the revision petitioner / 5th defendant has filed I.A.No.467 of 2017 to summon the concerned staff through the District Collector, Madurai, to place the petition mentioned documents and to give evidence. After contest, the Court below has dismissed the same holding that the documents sought to be summoned are completely irrelevant for deciding the issue in this case.

3. The learned counsel for the revision petitioner / 5th defendant would submit that knowing fully well that the revision petitioner / 5th defendant had purchased the share of the 2nd defendant in the suit property from the 2nd defendant, the first respondent / plaintiff colluding with the other respondents / defendants have filed the suit for partition and that the revision petitioner / 5th defendant has been in possession and enjoyment of the suit property by constructing a cinema theatre, that too after making publication requesting objections for issuing No Objection Certificate for constructing the same and in order to prove the same, the documents viz., all the types of publications made calling for objections for Issuing No Objection Certificate to raise semi-permanent theatre in the suit property and the periodical inspections report from 1997 to 2007 regarding construction of semi-permanent theatre in the suit property, are necessary documents and as the said documents are internal official correspondence of the cinema section and the Collectorate regarding the progress of the construction work made by the revision petitioner / 5th defendant in the suit property, the revision petitioner / 5th defendant could not obtain from the concerned department and hence, he has filed the said interlocutory application, but the Court below has erroneously dismissed the said application. Thus, he prayed to set aside the said order and allow the said interlocutory application.

4. Heard the learned counsel for the revision petitioner and perused the records carefully.

5. The suit is of the year 2007. A preliminary decree was passed on 01.12.2008. For passing final decree, an Advocate Commissioner was appointed and he has also filed his report. After filing written statement, the revision petitioner / 5th defendant remained *ex parte*, and after the Commissioner's report, he had filed



a petition to set aside the *ex parte* order and the same was ordered. According to the revision petitioner / 5th defendant, in order to prove the fact that having the knowledge of the respondents herein, he has been in possession and enjoyment of the suit property by putting up construction, the documents sought for by him are necessary documents.

6. Admittedly, the suit is filed for partition and the purchase of share of the 2nd defendant by the revision petitioner / 5th defendant is not denied by the respondents herein viz., the plaintiff and the other defendants. The revision petitioner / 5th defendant has also admitted that he has purchased the share of the 2nd defendant and nothing more. When that be so, the documents sought to be produced by the revision petitioner / 5th defendant for proving his possession are not necessary documents for deciding the issue involved in the suit. It appears that only in order to drag on the matter, the revision petitioner / 5th defendant has been filing petition after petition. The Court below has rightly rejected the relief sought for by the revision petitioner / 5th defendant and the same does not warrant any interference at the hands of this Court.

7. In view of the above, this civil revision petition is dismissed at the stage of admission itself. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

The III Additional Subordinate Judge,
Madurai.

Copy To:-

The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Ms.K.ABIYA, ADVOCATE IN SR No. 60403

GCG

TE/JC/SAR-4 : 20/04/2018 : 3P/5C