



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 26.02.2018

DELIEVRED ON : 17.04.2018

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

C.R.P (MD) No.136 of 2018 (PD)

and

CMP (MD) .No.578 of 2018

P.Chellappa

.. Petitioner/

Petitioner / Plaintiff

Vs.

N.Alagu

.. Respondent/

Respondent / Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order, dated 30.11.2017, passed in I.A.No.622 of 2017 in O.S.No.84 of 2004 by the learned District Munsif cum Judicial Magistrate Court, Thirumayam.

For petitioner

:Mr.M.R.S.Prabhu

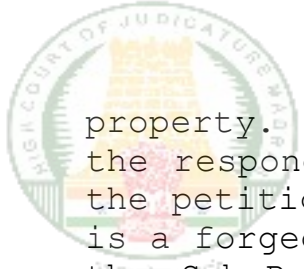
For respondent

: Mr.N.Balakrishnan

ORDER

This civil revision petition has been filed by the revision petitioner / plaintiff as against the order, dismissing the petition for reopen the case.

2. The petitioner / plaintiff has filed the suit in O.S.No.84 of 2004 for declaration and for consequential permanent injunction in respect of the suit properties. In respect of the 3rd item of the suit property, he prayed for the alternative relief of recovery of possession. The petitioner / plaintiff claimed the suit properties based on the will executed by one Alagammal in his favour. The respondent / defendant claimed the suit 3rd item of the property alone stating that the suit 3rd item of the property originally belonged to one Periasamy and after his death, his son by name Subramanian had entered into an unregistered sale agreement on 28/10.1992 and subsequently, he executed a registered sale deed on 20.02.2003 and from the date of sale agreement, he has been in possession and enjoyment of the suit 3rd item of the



property. When the matter is posted for reply to the argument of the respondent / defendant, the petitioner / plaintiff has filed the petition to reopen the case stating that Ex.B4 sale agreement is a forged one and it can be proved through send for records from the Sub-Registrar, Karaikudi. The Court below has dismissed the said application holding that the petitioner / plaintiff has not disputed the execution of the document, but only disputed the stamp paper and that he has to prove his case through his own title document and possession only, and not by disputing the documents of the other side. Aggrieved by the same, the revision petitioner has filed this revision petition.

3.The learned counsel for the revision petitioner / Plaintiff would submit that the unregistered sale agreement, dated 28.10.1992, was not sufficiently stamped and that the stamp paper, which used for sale agreement, was sold to some other persons. He would further add that in the certified copy of the sale agreement, dated 28.10.1992, obtained from the Court below on 31.08.2017, the signature of the executant was not found in the first page of the said agreement, but in the subsequent certified copy, dated 19.12.2017, obtained from the Court below, the signature of the executant was found in the first page of the sale agreement. The execution of the sale agreement is also mentioned in the sale deed, dated 20.02.2003. Thus, the respondent / defendant, playing fraud on the Court, is attempting to get a decree in his favour and in order to prove the same, the revision petitioner / plaintiff has filed a petition to reopen the case. But, the Court below has erroneously dismissed the same. Thus, he prayed to set aside the order passed by the Court below and to allow the said interlocutory application.

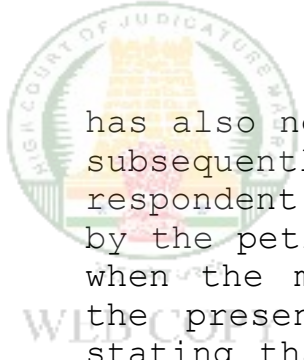
4. The learned counsel for the respondent / defendant would submit that the revision petitioner / plaintiff has no right to raise question about the execution of unregistered sale agreement, when, admittedly, he has no dispute about the registered sale deed. The signature of the executant is available in the first page of the sale agreement. But, the revision petitioner / plaintiff has raised a different story by producing two different certified copies. In the certified copy of the sale agreement, where the signature of the executant is stated to be not available in the first page of the agreement, may be insufficiently printed out. There is also no bar to use a stamp paper which has been purchased through another person, though the name of the person, who paid the money to the vendor alone appears on the stamp. Without proving title through his own documents, the revision petitioner / plaintiff attempted to dispute the title of the other side. In order to drag on the matter, he has filed the <https://hsr.scc.gov.in/> and the Court below has rightly rejected the same. Thus, he prayed to dismiss this civil revision petition.



5. Heard the learned counsel for both sides and perused the records carefully.

6. Admittedly, the above suit has been filed for declaration and for consequential permanent injunction in respect of the suit properties. In respect of the 3rd item of the suit property, the petitioner/plaintiff prayed for the alternative relief of recovery of possession in the year 2002 which was later on transferred to the present court from the Sub Court, Pudukottai. When the case was posted for plaintiff's side reply arguments, after hearing both sides arguments, the petitioner has come forward with the present petition to reopen the case regarding the discrepancies in Ex.B4-sale agreement stating that the same is forged one and it can be proved through the records on the file of the Sub Registrar, Karaikudi. Ex.B4 is unregistered sale agreement dated 20.10.1992 entered into between Alagu and Subramanian and the value of the stamp paper is Rs.3/- purchased in the name of Alagu and the stamp vendor affixed as S.R.M. Raj Ponnamaravathy and the same was marked as Ex.B4 by DW1 on 20.08.2015 but produced before the Sub Court, Pudukottai, on 31.03.2003. It is also seen that the respondent had purchased the suit property from the vendor based upon the sale agreement dated 28.10.1992 and the sale deed dated 20.02.2013 is marked as Ex.B3. The petitioner has never objected to the sale deed.

7. Perusal of the records shows that initially, the plaintiff denied the defendant's possession in the suit filed for declaration and injunction, but later prayed for recovery of possession against the defendants in respect of 3rd item of property alone. The plaintiff would state that the defendant made encroachments on 04.08.2002 in respect of 3rd item of property and therefore, he filed a petition for amendment of the plaint and for recovery of possession in respect of 3rd item of property alone. The learned Judge has specifically stated that the petitioner has not challenged the sale deed. The plaintiff has to prove his case only through his title documents and possession. It is also seen that the petitioner/plaintiff already filed re-open and recall petition on 23.01.2017 at the stage of arguments for further examination of PW1 and the same was allowed and PW1 evidence continued and Exs.A19 to A29 were marked and PW1 cross examination was over on 29.06.2017. While so, again, the petitioner filed another reopen and recall petition on 06.07.2017 for the purpose of publication regarding will attesting witness and the same was dismissed on 25.07.2017. Thereafter, the petitioner/plaintiff filed recall and reopen petition on 07.09.2017 for further examination of defendants witnesses and the same was also dismissed on 23.10.2017. Now, the plaintiff's side argument is heard and it is posted for defendant's side arguments which were heard on 23.10.2017 and at the request of the plaintiff, it was posted for reply arguments and now the plaintiff has come forward with the present application with new dimension. The petitioner



has also not stated how the sale agreement will help his case when subsequently sale deed has been executed in favour of the respondent which has not been challenged. All the attempts made by the petitioner has been dismissed which were not challenged and when the matter is posted for plaintiff's side reply arguments, the present application has been filed to send for documents stating that the sale agreement is a fraudulent one which is only to protract the proceedings and the learned Judge by the impugned order, has rightly dismissed the application with cost and therefore, the interference of this Court is not necessary.

Accordingly, this Civil Revision Petition is dismissed. No costs. The interim order already granted is vacated. Consequently, connected miscellaneous petition is dismissed.

Sd/

Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

To
The District Munsif cum Judicial Magistrate Court,
Thirumayam.

Copy to:
The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1cc to Mr.S.PRABHU, Advocate, SR.No.62332

C.R.P (MD) No.136 of 2018
17.04.2018

BALA/GCG
KK/RSK/07.05.2018/SAR-4/4P-5C