



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 03.08.2018

CORAM :

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**
C.R.P. (MD) (PD) No.1698 of 2014

and

M.P. (MD) No.2 of 2014

Kopperundevi

... Petitioner /5th Respondent
2nd Defendant

vs.

1.M.G.Thangaraj

... 1st Respondent/Petitioner/
Plaintiff

R.V.Krishnan (died)

2.Padmini

3.Senthilkumar

4.Vasanthakumar

...2 to 4 Respondents/ 2 to 4
Respondent/ 3 to 5 Defendant

Prayer:-Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.598 of 2014 in O.S.No.310 of 2005 on the file of the II Additional District Munsif, Trichy in charge of I Additional District Munsif, Trichy dated 04.07.2014 and to allow this civil revision petition.

For Petitioner : Mr.C.Vakeeswaran
For R1 : Mr.R.Suresh Kumar caveator
For R2 to R4 : No appearance

ORDER

This civil revision petition is preferred against the order passed in I.A.No.598 of 2014 in O.S.No.310 of 2005 on the file of the learned II Additional District Munsif, Trichy.

2.The brief facts that are necessary for the disposal of this civil revision petition are as follows:

The first respondent in this civil revision petition as plaintiff filed a suit for specific performance in O.S.No.310 of 2005 on the file of the learned II Additional District Munsif, Trichy. The plaint was subsequently amended to include the prayer for declaration that the subsequent sale deed executed by the first defendant in favour of the second defendant namely, the revision petitioner herein is null and void.



3.It is the case of the plaintiff that the first defendant in the suit by name, R.V.Krishnan, executed a sale agreement in favour of the first respondent / plaintiff on 05.10.2003 and later executed another sale agreement. When the plaintiff's side evidence was to be closed, the first respondent / plaintiff filed an Interlocutory application in I.A.No.598 of 2014 to receive the document namely, a settlement deed alleged to have been executed by the first defendant in the suit in favour of his mother in law.

4.The said settlement deed is an unregistered document and it is stated that the said document proves the wavering mind of the first defendant in the suit and that the document is relevant to support the case of the plaintiff.

5.It is further stated that after executing the settlement deed in favour of the plaintiff's mother in law, who is also the mother of the first defendant, the first defendant had left the Registration Office before registration of the document.

6.The said application was allowed. Even though the lower Court found that the document is only an unregistered settlement deed executed by the first defendant in the suit in favour of the plaintiff's mother in law, the document can be received to establish the wavering mind of the first defendant. Further, the lower Court also observed that no prejudice will be caused to the revision petitioner namely, the second defendant in the suit in O.S.No.310 of 2005. Challenging the order passed in I.A.No.598 of 2014 in O.S.No.310 of 2005 on the file of the learned II Additional District Munsif, Trichy, the above civil revision petition has been filed.

7.The learned counsel for the petitioner submitted that the said settlement deed is an unregistered document and hence, it is not admissible and it cannot be looked into for any collateral purpose. He further submitted that the petition has been allowed on flimsy grounds and that the document is not relevant to decide any issue that arises for consideration in the suit in O.S.No.310 of 2005.

8.The learned counsel for the petitioner further submitted that the document is not relevant to support the case of plaintiff in the suit for specific performance. It is also submitted that the application filed by the petitioner is only to drag on the proceedings with ulterior motive and for extraneous reasons.

9.The lower Court has stated that the purpose of marking the unregistered settlement deed is to establish the wavering mind of the first defendant in the suit, who executed the sale agreement in favour of the plaintiff. The fact that the first defendant has executed a sale deed after execution of sale agreement is a fact and it is not necessary for the plaintiff in the suit for specific performance to prove the wavering mind of the first defendant. In this case, execution of sale agreement is disputed.



10.The learned counsel for the first respondent pointed out that the plaintiff has specifically pleaded about the document namely, the unregistered settlement deed. In a suit for specific performance, the plaintiff has to prove his readiness and willingness, apart from satisfying the Court to get the equitable relief of specific performance of the agreement of sale, which is proved beyond doubt.

11.The other issue that may arise for consideration in the suit is whether the second defendant is a bona fide purchaser or not. Unless, the ingredients of Section 16 (C) of Specific Relief Act, is satisfied and the Court find that the plaintiff is entitled to get the equitable relief of specific performance, the plaintiff can not succeed by saying that the first defendant was having a wavering mind.

12.Therefore the document, which is relied upon by the plaintiff is irrelevant for the purpose of seeking any relief and this Court is unable to subscribe to the view expressed by the lower Court while allowing the petition. The trial cannot be allowed to be prolonged for irrelevant and unnecessary causes.

13.Therefore, this civil revision petition is allowed and the order passed in I.A.No.598 of 2014 in O.S.No.310 of 2005 on the file of the II Additional District Munsif, Trichy, is set aside. Having regard to the fact that the suit was filed in the year 2005, this Court is inclined to direct the learned I Additional District Munsif, Trichy, to expedite the trial and dispose of the suit in O.S.No.310 of 2005 within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1. The I Additional District Munsif,
Trichy.

2. The II Additional District Munsif,
Trichy.

+1cc to Mr.C.Vakeeswaran, Advocate Sr.No.76951

+1cc to Mr.R.Suresh Kumar, Advocate Sr.No.76926

MM

VB/SKN/SAR1/06.12.2018/3P/5C

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