



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 04.10.2018
DELIVERED ON : 29.10.2018

WEB COPY

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THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) Nos. 1917 and 1918 of 2015
and
M.P. (MD) Nos. 1 and 1 of 2015

Ramasamy

.. Petitioner/Respondent/Defendant
(in both cases)

Vs.

M.K.Kandasamy

.. Respondent/Petitioner/Plaintiff
(in both cases)

Common Prayer : These Civil revision petitions filed under Article 227 of the Constitution of India, to set aside the fair and decreetal orders dated 14.07.2014 made in I.A.Nos.436 and 437 of 2014 in O.S.No.229 of 2010 on the file of the learned Principal Sub Judge, Karur.

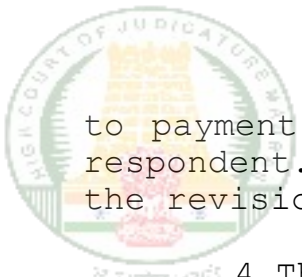
For Petitioner : Mrs.Prabha for Mr.S.Gokul raj
For Respondent : Mr.V.Balaji
(in both cases)

COMMON ORDER

Heard Mrs.Prabha for Mr.S.Gokul raj, learned counsel appearing for the petitioner and Mr.V.Balaji, learned counsel appearing for the respondent.

2.These petition have been filed against the fair and decreetal orders dated 14.07.2014 made in I.A.Nos.436 and 437 of 2014 in O.S.No.229 of 2010 on the file of the learned Principal Sub Judge, Karur.

3.The petitioner herein is the defendant and the respondent herein is the plaintiff in the suit. The respondent herein has filed a suit in O.S.No.29 of 2010 before the learned Principal Sub Judge, Karur for specific performance. The respondent herein has filed petitions in I.A.Nos.436 and 437 of 2014 before the learned Principal Sub Judge, Karur for reopening the trial and for recalling D.W.1 for further examination and the petitions were allowed subject



to payment of Rs.250/- (Rupees Two Hundred and Fifty only) to the respondent. Against the order, the petitioner has come forward with the revision petition.

4. The case of the plaintiff/respondent herein is that there was sale agreement between the plaintiff/respondent and the defendant/petitioner. The price was fixed as Rs.6,10,000/- (Rupees Six Lakhs and Ten thousand only) There was an oral sale agreement. Three months time was fixed for completion of the sale. The respondent herein is ready and willing to perform his part of the contract. The petitioner herein has not obtained patta in his name and did not come forward to measure the property. The petitioner herein has failed to execute the sale deed. On 13.03.2010, the petitioner met the respondent and he was told that there was a problem in obtaining the separate patta and promised that he would execute sale deed. After getting a separate patta during the first week of November 2016, the respondent herein came to know that the petitioner herein was making steps to alienate the suit property to third persons. The respondent herein came to know that the petitioner herein is having a son and two daughters who claimed share in the property in a partition suit in O.S.No.120 of 2010. The respondent herein issued legal notice and has filed the suit in O.S.No.229 of 2010 for specific performance.

5. On the side of the petitioner, it is stated that the respondent herein has filed two I.A. Petition. One is for recalling D.W.1 and the other is for reopening the evidence and that without assigning reasons, the trial Court has allowed the petition on payment of cost and that after the closure of the evidence, at the stage of argument, the respondent has filed these petitions only to drag on the proceedings and these petitions are liable to be dismissed.

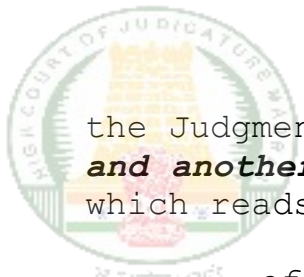
6. The learned counsel appearing for the petitioner relied on the Judgment passed by the Hon'ble Supreme Court in the case of **Vadiraj Naggappa Vernekar v. Sharad Chand Prabhakar Gogate** reported in **AIR 2009 Supreme Court 1604**, which reads as follows:

"Recalling of such witness for giving further evidence regarding facts not mentioned in affidavit-Held not permissible"

7. The learned counsel appearing for the petitioner relied on the Judgment passed by the Hon'ble Supreme Court in the case of **K.K.Velusamy v. N.Palanisamy** reported in **(2011) 7 MLJ 612(SC)**, which reads as follows:

"Neither trial Court nor High Court considered question whether it was fit case for exercise of discretion under Section 151 or Order 18 Rule 1 of Code-Order of High Court and trial Court dismissing application under Section 151 of Code set aside"

8. The learned counsel appearing for the petitioner relied on



the Judgment passed by this Court in the case of **P. Mohan (Deceased) and another v. M.K.Azhagiri and Others** reported in (2013) 8 MLJ 51, which reads as follows:

"Application to recall and reopen evidence of witness and to mark documents cannot be maintained at belated stage of conclusion of trial."

9.The learned counsel appearing for the petitioner relied on the Judgment passed by this Court in the case of **S.K.Sreedhar v. R.Raghavan and another** reported in 2015 (2) CTC 602, which reads as follows:

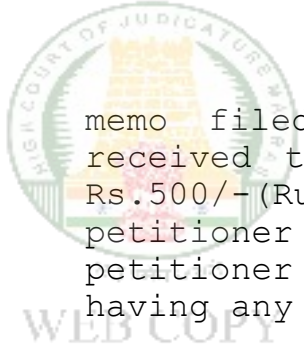
"Application for reopening of evidence and recalling of D.W.1, filed at fag end of case, just before pronouncement of judgment-No valid reason stated by respondents in affidavit filed in support of their petition-in such circumstances, Order of trial Court allowing said application, held, erroneous and set aside."

10.On the side of the respondent, it is stated that the counter filed by the petitioner was only formal in nature. The only objection raised by the petitioner is that I.A. Petitions are filed to drag on the proceedings. The trial Court has allowed the petitions on payment of cost of Rs.250/- . The cost was received by the petitioner without protest. Even if it is received with protest, the petitioner cannot question the order after acceptance of the amount.

11.The learned counsel appearing for the respondent relied on the Judgment passed by this Court in the case of **M/s. Fast Cool Services by Partners and two others v. P. Shanthakumari** reported in 2000 (III) CTC 257, which reads as follows:

"Merely receiving cost under protest will not change position and principle of estoppel will apply- person receiving cost under protest or without prejudice to file appeal is estopped from filing appeal."

12.A perusal of the records reveals that the respondent is the plaintiff in the suit and the burden is cast upon the plaintiff to prove the case. After the closure of the evidence, the respondent has filed a petitions to reopen evidence and to recall D.W.1 for further examination. The respondent has filed I.A.Nos.435 and 436 of 2014 for recalling and reopening the witnesses. The petitioner has herein filed a counter. The only reason stated in the counter is that these petitions are filed at the belated stage and are filed at the fag end of the trial.



memo filed by the respondent reveals that the petitioner has received the cost in both the petitions and the total costs is Rs.500/-(Rupees Five Hundred only). After receiving the cost, the petitioner has come forward to file this revision petition. As the petitioner has received the cost, the revision petitioner is not having any right to file the revision petition.

14.Hence, there is nothing sufficient enough to interfere in the orders passed by the trial Court. These Civil Revision Petitions are dismissed. No Costs. Consequently, M.P.(MD) Nos.1 and 1 of 2015 are closed.

Sd/-
Assistant Registrar (Crl.side)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

The Principal Subordinate Judge, Karur.

+ 1 CC TO Mr.S.GOKULRAJ, ADVOCATE IN SR No. 92556
+ 1 CC TO Mr.V.BALAJI, ADVOCATE IN SR No. 92519

MRN

TE/SV/SAR-4 : 30/11/2018 : 4P/4C

C.R.P. (PD) (MD) Nos.1917 and 1918 of 2015
29.10.2018