



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.06.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P.(PD) (MD) No.1063 of 2016
and C.M.P. (MD) No.5340 of 2016

M.M.Syed Abdul Gani

... Petitioner/Petitioner/Plaintiff

-vs-

1. S.A.Shegu Fathimal
2.Ismail

... Respondents/Respondents/Defendants

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the order dated 05.02.2016 made in I.A.No.42 of 2016 in O.S.No.46 of 2011 on the file of the District Munsif-cum-Judicial Magistrate, Cheranmahadevi, Tirunelveli District.

For Petitioner : Mr.J.Parekhkumar
For Respondents : Mr.H.Arumugam

ORDER

The revision petitioner is the plaintiff in O.S.No.46 of 2011 on the file of the District Munsif-cum-Judicial Magistrate, Cheranmahadevi, Tirunelveli District and in the suit, the plaintiff sought for declaration, etc. Subsequently, the revision petitioner / plaintiff took out an application in I.A.No.42 of 2016 for reopening the case for the purpose of chief examination of the plaintiff himself and the said application was dismissed by the Trial Court on the ground that the application was mainly filed to drag on the proceedings and challenging the same, the petitioner / plaintiff is before this Court.

2. It is the case of the revision petitioner that the suit schedule property originally belonged to one Seyad Meeral Beevi and her legal heirs and subsequently, she had executed a sale deed dated 24.02.1987 in his favour and in favour of his minor children. The property of the defendants was situated adjacent to the plaintiff's property and since the plaintiff was residing in some far off place due to employment, despite resistance by his wife, they put up a thatched and also constructed a room therein.



3. It is the further case of the revision petitioner that previously, he had made a representation to the Jamaath, seeking their intervention for illegal encroachment of the defendants into the property and on due enquiry, the elders in the Jamaath also instructed the defendants to remove the encroachment and hand over the possession to the plaintiff and also registered those particulars in the Jamaath Register. The revision petitioner states that during trial, the plaintiff had forgotten to examine himself with regard to those documents and therefore, it is necessary to call the President of the Jamaath for the examination of those documents.

4. The revision petitioner has also stated that it is mandate on the part of the Trial Court to ensure the extension of balance of convenience on both sides and the refusal of the Trial Court in reopening the case will definitely be prejudicial to him and therefore, the said order needs the intervention of this Court for rendering substantial justice to him.

5. Learned counsel for the respondents has contended that though it is unnecessary to reopen the case for examination of Jamaathars, the defendants had given no objection before the Trial Court itself for reopening of the case for the said purpose and therefore, he has no say in this case.

6. Heard the learned counsel for the petitioner and this Court perused the material documents available on record.

7. The revision petitioner / plaintiff had filed an application under Section 151 of CPC to reopen the case. A reading of both the plaint as well as the application filed by the plaintiff makes it vividly clear that the dispute is essentially between the family members. It is stated by the petitioner that though there was an amicable settlement pursuant to the mediation between the petitioner and the defendants by the Jamaath, the said fact is being denied by D.W.1, which necessitated the petitioner to prove the same by summoning the President of the Jamaath along with the entry in respect thereof in the Jamaath Register, which is under the custody of present Muthavalli. However, the Trial Court has held that such entry alone will not be sufficient to prove the case of the plaintiff, as the plaintiff had sought for declaration and possession. As rightly pointed out by the petitioner, the Jamaath is a registered body being controlled by the Tamil Nadu Wakf Board under the Wakf Act and as such, the Register being maintained by the Jamaath is a public document, which can be easily called for the purpose of verification. By doing so, it is easy for the Trial Court to render a just and reasonable finding thereof.

8. It is to be noted that to err is human and the inadvertent omission cannot be taken as a serious mistake committed by the plaintiff in not examining appropriate persons with respect to the documents on earlier occasion. In the application filed by



the plaintiff itself, it has been averred that in the event of non examination of the documents, he will be put to irreparable loss, hardship and injury. Therefore, finding much force in the contention raised by the learned counsel for the petitioner and to meet out the ends of justice, this Court is of the view that the order of the Trial Court is liable to be set aside.

9. In the result,

a) this Civil Revision Petition is allowed and the order dated 05.02.2016 made in I.A.No.42 of 2016 in O.S.No.46 of 2011 by the learned District Munsif-cum-Judicial Magistrate, Cheranmahadevi, Tirunelveli District, is hereby set aside;

b) the Trial Court is directed to reopen the case for the purpose of examination of Muthavalli of the Jamaath with regard to the Register under his custody alone and on such reopen, the plaintiff shall examine him, relating to the documents and complete his examination within a period of two weeks from the date of ordering to reopen by the Trial Court;

c) the Trial Court, upon completion of the entire exercise, shall conduct the trial of the case in O.S.No.46 of 2011 and dispose of the same within a period of three months from the date of completion of examination, without giving any unnecessary adjournment to either parties and the parties shall also cooperate for early disposal of the suit within the stipulated period prescribed above.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To:

1. The District Munsif-cum-Judicial Magistrate,
Cheranmahadevi,
Tirunelveli District.

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

+ 1 CC TO Mr.H.ARUMUGAM, ADVOCATE IN SR No. 69547

+ 1 CC TO Mr.J.PAREKHKUMAR, ADVOCATE IN SR No. 69202

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TE/SV/SAR-2 : 18/07/2018 : 3P/6C

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