



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 04.04.2018

DELIVERED ON : 10.08.2018

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THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) Nos.1048 and 1049 of 2017
and
CMP (MD) No.4622 of 2017

K.Muniyandi : Revision Petitioner in both the CRPs/
2nd Defendant

vs

1.R.Krishnaveni
2.G.Revathy
3.K.Kalavathy
4.J.Malathy
5.B.Vasavi
6.Selvakumar

.. Respondents in both the CRPs/
Plaintiffs

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of Constitution of India, against the fair and decreetal order dated 09.03.2017 passed in I.A.Nos.248 and 249 of 2017 in O.S.No.124 of 2012 on the file of the District Munsif Court, Melur.

(In both the CRPs)

For Petitioner : Mr.V.Om Prakash
For Respondents : Mr.R.J.Karthick (for R2 to R6)
No Appearance (for R1)

COMMON ORDER

These Civil Revision Petitions have been filed against the order dated 09.03.2017 passed in I.A.Nos.248 and 249 of 2017 in O.S.No.124 of 2012 on the file of the District Munsif Court, Melur, dismissing the petitions filed by the petitioner under Section 151 of C.P.C. to re-open the defendants side case and to issue summons to the Tahsildar, Madurai North for production of documents mentioned in the petition.



2. The petitioner is the second defendant in the suit and he filed the aforesaid petitions for himself on behalf of the defendants 6 to 11.

3. Since the orders under revision arise out of the same suit and the parties are one and the same, both the Civil Revision Petitions were heard together and disposed of by this common order.

4. The second defendant filed I.A.Nos.248 and 249 of 2017 alleging that on the side of the defendants, D.W.1 was examined and Exs.B1 to B17 were marked on 19.09.2016. At the time of examination of D.W.1 since they were having photo copy of Patta in respect of Patta No.79, the same was not marked. While cross-examining D.W.1, the plaintiffs have asked questions regarding Patta No.79. Therefore, it is necessary to summon the Tahsildar with a direction to produce the Patta Pass Book bearing Patta No.79. It is also alleged that when the suit was posted for further examination of defendants, their counsel has not appeared as he was engaged in other Court and due to absence of the counsel, the evidence on the side of the defendants was closed by the trial Court. After knowing the same, the defendants have filed petition to re-open their side evidence and to issue summon to the Tahsildar, Madurai North for production of documents stated in the petition.

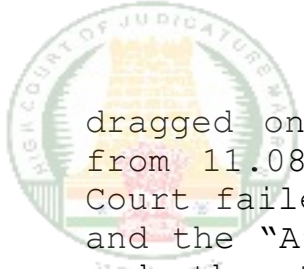
5. Resisting the petitions, the respondents have filed counter stating that since the documents referred to by the defendants are public documents, the defendants can very well obtain certified copy and file the same before the Court, but they have failed to do so. Only to drag on the proceedings, the defendants have filed these petitions. It is stated that the suit was originally filed in the year 2005 before the District Munsif Court, Madurai and thereafter, the same was transferred to the District Munsif Court, Melur in the year 2012 and when the suit was posted for arguments, the defendants have filed these petitions. If the petitions are allowed, the plaintiffs would be put to irreparable loss and damage.

6. Upon consideration of the rival submissions, the trial Court dismissed both petitions by way of separate orders. Aggrieved by the same, the second defendant has preferred these Civil Revision Petitions.

7. I heard Mr.V.Om Prakash, learned counsel for the petitioner and Mr.R.J.Karthick, learned counsel for the respondents 2 to 6 and also perused the documents. No representation on behalf of the 1st respondent.

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8. The learned counsel for the petitioner submitted that the trial Court failed to consider that the plaintiffs have alone



dragged on the proceedings in I.A.No.152 of 2014 for the period from 11.08.2014 to 08.09.2016. He would submit that the trial Court failed to consider the validity of the Patta Pass Book No.79 and the "A" Register, which were supported to the defendants' case and the trial Court erroneously closed the defendants' side evidence on 06.01.2017. In any event, the order of the trial Court are untenable and unsustainable in the facts and circumstances of the case.

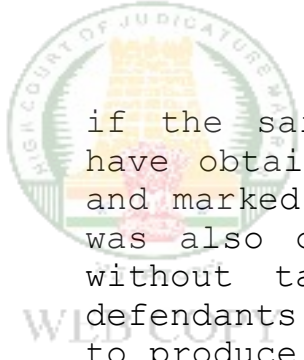
9. Per contra, the learned counsel appearing for the respondents 2 to 6 submitted that only to drag on the proceedings, the defendants have filed petitions to re-open and issue summons to the Tahsildar for production of documents. He submitted that the documents which were sought to be produced by the Tahsildar are public documents and if the defendants are really interested in the early disposal of the suit, they can very well obtain certified copy of the same and produced it well before closing their side evidence. The learned counsel submitted that despite several opportunities granted to the defendants, they have not produced their further evidence and hence, the trial Court closed their side evidence. Finally, he argued that the order of the trial Court is a reasoned one and no interference is warranted.

10. The point that arose for consideration is whether the trial Court was right in dismissing the petitions filed by the defendants to re-open their side evidence and to issue summons to the Tahsildar, Madurai North for production of certain revenue documents.

11. It appears that on 17.07.2006, Issues were framed in the suit and directed the parties to file list of witnesses and documents within a period of fifteen days. Subsequent to the framing of Issues, the defendants have failed to follow the procedures laid down in Order 16, Rule 1 of C.P.C. Anyhow, the trial has commenced and plaintiffs' side evidence was over and on behalf of the defendants', D.W.1 was examined and Exs.B1 to 17 were marked.

12. According to the respondents, despite several opportunities granted to the defendants, they have failed to produce the Patta Pass Book No.79 and other documents and when finally the suit was posted for examination of further evidence, the counsel on record has failed to appear before the Court and the trial Court had closed the evidence and posted the matter for arguments.

13. In its order, the trial Court stated that the second defendant has filed I.A.No.152 of 2014 on 24.02.2014 for filing documents including the Patta bearing No.79. Since the defendants were possessing xerox copy of Patta bearing No.79, the same was not allowed to mark in the suit. It was observed that



if the said document was really required, the defendants would have obtained certified copy when I.A.No.152 of 2014 was pending and marked the same, but the defendants have failed to do so. It was also observed that in order to drag on the proceedings and without taking steps to send for revenue documents, now the defendants have filed petition to issue summons to the Tahsildar to produce the documents which cannot permitted.

14. As rightly held by the trial Court as per Order 17, Rule 2(c) of C.P.C., the pleader of a party was engaged in another Court is not a ground for an adjournment. It is also seen from the order of the trial Court that the defendants were given several opportunities to examine their side further witnesses. Despite having granted several opportunities, they have failed to examine further witnesses. But the second defendant has filed petition belatedly to issue summons to the Tahsildar to produce Patta Pass Book bearing No.79.

15. It is apposite to mention that nothing prevented the defendants to obtain certified copy of Patta bearing No.79 at the earlier point of time and marked the same when D.W.1 was examined. The defendants have taken steps to summon the Tahsildar only after twelve years that too when the suit was posted for arguments. The aforesaid approach adopted by the defendants would clearly show that only to drag on the proceedings, the second defendant has filed I.A.Nos.248 and 249 of 2017 and the trial Court was right in dismissing the petitions.

16. As rightly observed by the trial Court, the documents sought to be marked by summoning the Tahsildar are public documents and the defendants can very well obtain the certified copy and file the same before the Court. It is to be mentioned that nothing on record to show that the defendants have taken steps to send for the documents mentioned in the petition as per the procedure laid down in the Code of Civil Procedure, 1908. If really, the defendants are interested in speedy disposal of the suit, they would have obtained certified copy of the documents at the earlier point of time. In the instant case, as stated supra, the defendants have failed to do so.

17. For the foregoing reasons, no valid grounds have been made out to interfere with the order of the trial Court. Upon analysing the legal position and in the facts and circumstances of the case, the trial Court has rightly dismissed the petitions and there is no valid ground to interfere with the order of the trial Court and the Civil Revision Petitions are liable to be dismissed.

18. In the result, the Civil Revision Petitions are dismissed with costs. Consequently, connected miscellaneous petition is closed. The trial Court is directed to dispose of the suit on merits and in accordance with law as expeditiously as possible.

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possible. It is made clear that this Court has not made any observation on the merits of the suit.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar (CS-I)

To

The District Munsif,
Melur.

+ 1 CC TO Mr.R.J.KARTHICK, ADVOCATE IN SR No. 78181

VSV

TE/KAK/SAR-1 : 28/08/2018 : 5P/3C

order made in
C.R.P. (MD) (PD) Nos.1048 and 1049 of 2017 and
CMP (MD) No.4622 of 2017
10.08.2018