

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 25.02.2019

CORAM:

THE HONOURABLE MS. JUSTICE P.T.ASHA

CRP (NPD) No.919 of 2018
and
CMP.Nos.19074 & 4968 of 2018

I.V.Ramamoorthy

...Petitioner

Vs

1. K.Mohan

2. The Tamil Nadu Slum Clearance
Board,
Rep. by its Managing Director,
Chennai.

3. The Revenue Officer,
Estate No.7,
Tamil Nadu Slum Clearance
Board,
Chennai.

...Respondents

PRAYER: Civil Revision Petition filled under Section 115 of Civil Procedure Code to set aside the fair and decretal order dated 07.11.2017 made in CMP.No.1029 of 2016 in AS.No.345 of 2013 on the file of VI Additional City Civil Court, Chennai.

For Petitioner

: Mr.G.T.Subramanian

For Respondents

: Mr.A.Muruganandam
Caveator Counsel for R1
No Appearance for R2 & R3

ORDER

Though the Civil Miscellaneous Petitions are listed today, by consent of both the parties, the main Civil Revision Petition itself is taken up for final disposal.

2. The present Civil Revision Petition is filed challenging the order passed by the Appellate Court namely VI Additional City Civil Court, Chennai in CMP.No.1029 of 2016 in AS.No.345 of 2013, in and by which, the learned Judge has allowed the application for issuing *subpoena* to the 1st respondent/Slum Clearance Board by not only allowing the application, but also directing the document to be marked as EX.C1 series. The 3rd respondent in the First Appeal has challenged the said proceedings in this revision.

3. The brief facts which are necessary to dispose of the revision petition are as follows:

The 1st respondent, who is the plaintiff had filed a suit in O.S.No.6019 of 2008 on the file of the II Assistant City Civil Judge, Chennai, for the following reliefs.

- a) declaring that the plaintiff is the original allottee to the schedule mentioned property and consequently direct the

defendants 1 and 2 to issue the allotment order in favour of the plaintiff in respect of the schedule property.

b) for a permanent injunction restraining the 3rd defendant, his men, agents, servants, representatives, legal heirs, subordinates or any other person claiming through or under him in any manner interfering with the peaceful possession and enjoyment of the suit premises bearing Plot No.331, Door No.24/T, Throwpathi Amman Koil 5th Cross Street, Velachery, Chennai - 600042, more fully described in the schedule hereunder.

4. The said suit was dismissed holding that the document showing possession is only in the name of the 3rd defendant and the plaintiff has not let in any proof to show that he is in possession of the suit property. The learned Judge also held that the plaintiff ought to have moved the Writ Court instead of approaching Civil Court.

5. Challenging the said Judgement and decree, the 1st respondent herein had filed AS.No.345 of 2015 on the file of the VI Additional City Civil Judge, Chennai. Pending the appeal, the 1st respondent taken out the impugned petition in which he had sought for the following reliefs:

"...may be pleased to summon the 1st and 2nd respondents to produce the entire list of documents.

1) issue sopheha to produce entire eligible list of Velachery Lakshmipuram Allotment Scheme.

2) allotment list of the initial stage and the estate officer to be enquired as evidence.

3) to bring the entire list of houses belonging to Ramamoorthy at the area.

4) to produce entire document correspondent between Mr.Mohan, Ramamoorthy and TNSCB of the Estate Office and Head Office.

5) to produce TNUDP - list and pass such further or other order or orders as this Hon'ble Court may deem fit and proper in the interest of justice and thus render justice."

सत्यमेव जयते

6. Along with the said application, it appears that the revision petitioner has also filed CMP.No.83 of 2017, the details of which are not available in the common order of the learned VI Additional City Civil Judge, Chennai passed in CMP.Nos.1029 of 2016 and 83 of 2017. The 1st respondent has filed the said petition invoking the provisions of Order 16 Rule 6 of CPC to issue summons to produce the documents. In the affidavit of the said

petition, he prayed that in the interest of justice, there may be an order of *Subpoena* to the respondents 1 and 2 to produce the entire list of documents stated therein. The said petition was strongly opposed by the revision petitioner, who would inter-alia state that the invocation of the provisions of Order 16 Rule 6 of CPC was wrong and not maintainable and that in the appeal stage, such a petition could not be taken. The revision petitioner had further contended that even the ingredients of Order 41 Rule 27 of CPC have not been complied with in the said petition. However, the learned Judge has proceeded to pass a common order CMP.Nos.1029 of 2016 and 83 of 2017, which reads as follows:

7. In the result, CMP.No.1029 of 2016 is allowed thereby documents filed by the first respondent has to be marked as Ex.C1 series for which taking additional evidence through officials of the 1st respondent is not necessary. Thereby petition in CMP.No.83 of 2017 is dismissed. Ex.C1 series document shall be marked subject to proof of admissibility and it can be decided at the time of judgement only.

7. In order to file additional pleadings, the provisions of law that has to be invoked is the provisions of Order 41 Rule 27 CPC. Order 41 Rule 27 of CPC can be invoked only if the following circumstances exists, namely

a) where the Court had refused to admit evidence which ought to have been admitted.

b) where the party who is producing additional evidence establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed.

c) where a appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgement.

It is only in the case of these three contingencies that such an application receiving additional documents can be termed.

8. The provisions of Order 16 Rule 6 of CPC deals with summons to produce documents prior to the stage of trial and the same cannot be invoked at the appeal stage. In a case of this nature, it is seen that the application which has been moved by the 1st respondent under Order 16 Rule 6 which is narrated above, cannot be invoked at the stage of appeal. When a bare reading of the provisions of Order 41 Rule 27 of CPC clearly shows that none of the circumstances exist in the instant case in the affidavit filed in support of the impugned petition put forward such contingencies, it is rather strange that the Appellate Court which dismissed

the application for receiving the additional documents, allowed the *subpoena* application and directed to produce those documents to be marked as Court exhibits. The order of the learned VI Additional City Civil Judge, Chennai, not only suffers from perversity, but also passed on total non-application of mind and therefore, deserves to be set aside.

9. Accordingly, the order dated 07.11.2017 made in CMP.No.1029 of 2016 in AS.No.345 of 2013 on the file of VI Additional City Civil Court, Chennai, is set aside. The Civil Revision Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

25.02.2019

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Internet: Yes/No

Speaking Order/Non-Speaking Order

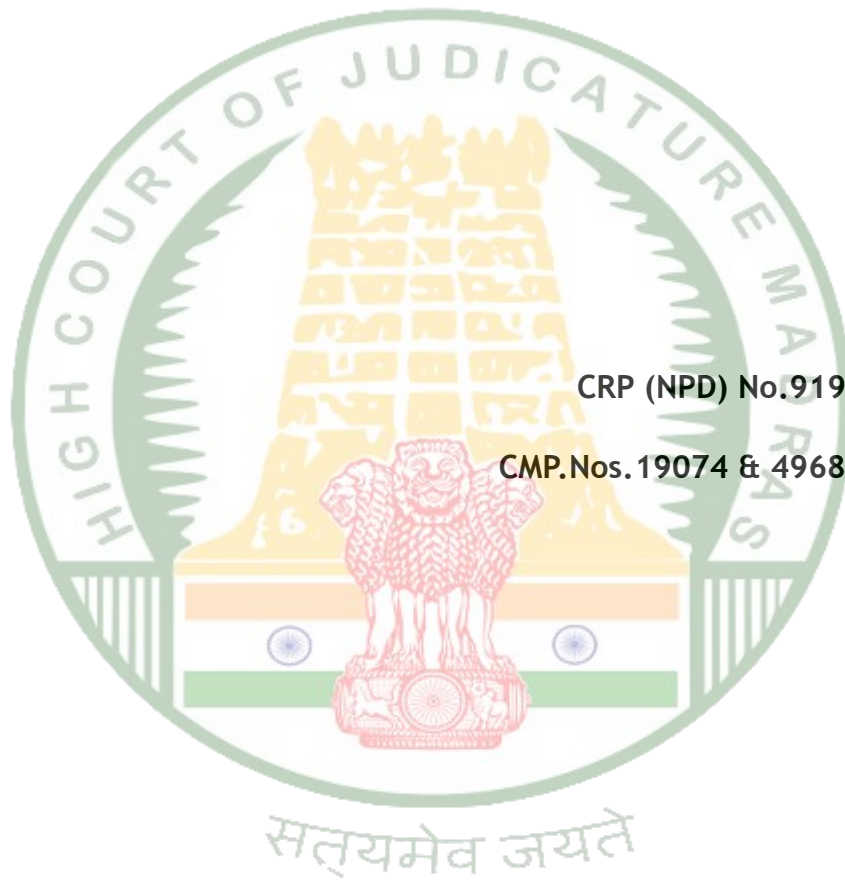
To

1. The Managing Director,
The Tamil Nadu Slum Clearance Board,
Chennai.

2. The Revenue Officer,
Estate No.7,
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