

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.03.2019

Delivered on: 04.06.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

Rev.Appl.No.150 of 2018

in

C.R.P.No.83 of 2018

and

CMP.No.8646 of 2018

1. Mrs. Krishnaveni
2. M. Markandan
3. E. Subramani

... Petitioners

Smt. Vijaya

Vs

... Respondent

सत्यमेव जयते

PRAYER: Review application is filed under O.47 Rule 1 of C.P.C. r/w under section 114 C.P.C. praying to review the findings recorded in the order passed by this Hon'ble Court in C.R.P.(PD) No.83 of 2018 dated 13.03.2018.

For Petitioners : Mr. R. Balasubramaniam

ORDER

The above Review Application is directed against the order dated 13.03.2018 in C.R.P.No.83 of 2018. The defendants are the review petitioners. It is necessary to briefly allude to the facts of the case for more fully appreciating the review petition now under consideration of this Court.

2. The respondent/plaintiff had filed the suit O.S.No.49 of 2000 on the file of the District Munsif, Arakonam for a permanent injunction restraining the defendants, their men, servants and agents from in any way interfering with her peaceful possession and enjoyment of the suit property.

3. The suit property is a house site bearing Survey No. 862/17 measuring an extent of 7 ½ cents (3270 sq.feet) in Thanigai Polur Village of Arakkonam Taluk together with a small hut constructed thereon.

4. The plaintiff had come forward with a case that the property originally belonged to one Kupusamy Naidu, who sold the suit

property to the plaintiff's father M.Subramani under a registered sale deed dated 21.10.1971. From the date of his purchase, the said M.Subramani was in peaceful possession and enjoyment of the suit property together with his wife and children without any disturbance or interference from the third parties.

5. After the demise of the said Subramani, his wife Savithirammal and the plaintiff who is his daughter were in continuous possession and enjoyment of the suit property. Savithirammal had put up a small hut in the suit property and was living there along with the plaintiff.

6. On 12.04.2000, Savithirammal executed a settlement deed settling the suit property in favour of the plaintiff who since then has been in possession and enjoyment of the same.

7. The defendants who had no right or title or interest over the suit property had attempted to trespass into the suit property with the help of antisocial elements on 23.04.2000, this attempt was suitably resisted by the plaintiff. However, the plaintiff is apprehensive that

the defendants would once again make an attempt and therefore she is coming forward with the suit in question.

8. The first defendant had filed the written statement which was adopted by the other defendants inter alia contending that out of the property purchased by the plaintiff's father, 3 ½ cents was sold away by Subramani together with the cart track. They would further contend that the settlement deed which has been obtained by the plaintiff from her mother is a sham and nominal document made with an intent of getting an order of injunction.

9. The defendants would put the facts of the case in perspective by stating that from and out of the 7 ½ cents that was purchased by Subramani, he had sold away an extent of 3 ½ cents together with the cart track to one Periyadesa Pillai of one Thanigai Polur village under a registered sale deed dated 11.05.1981, who in turn had sold only the 3½ cents without selling the cart track to the first and second defendant herein vide registered sale deed dated 1.09.1983. The first defendant had purchased the additional land of the cart track to the extent of 13 feet towards East and West from Periyadesa Pillai and 39

feet towards North South totally measuring 507 sq.ft. under a registered sale deed dated 3.03.2000.

10. The first and second defendant thereafter assigned the right to the cart track to the 3rd defendant under a registered sale deed 1.03.2000. It is the case of the defendants that on the instigation of the neighbours, the plaintiff's husband one Ravi along with antisocial elements attempted to trespass into the suit property and therefore the first defendant's husband had lodged a police complaint against the plaintiff's husband and others before the Arakkonam Police Station and followed it up with a caveat petition against the plaintiff's mother and others.

11. In this background, the plaintiff's mother has proceeded to create the settlement deed in respect of the entire extent of 7 ½ cents in survey No.862/17 in favour of the plaintiff totally suppressing the sale of 3 ½ cents to defendants 1 and 2 herein.

12. The plaintiff's right to the suit property is excluding 3 ½ cents and the cart track area of 507 sq.ft. purchased by the

defendants 1 and 2 from the said Periyadesa Pillai under the sale deed mentioned supra, the defendants would therefore seek to have the suit dismissed.

13. It appears from the perusal of the records that the defendants had not submitted themselves for examination and the suit came to be decreed on 12.06.2008. Aggrieved by the said Judgment and decree, the defendants had filed A.S.No.80 of 2008 on the file of the Sub Court Ranipet. The appeal suit was also dismissed by Judgment and decree dated 26.02.2010, without hearing the arguments of the counsel for the appellants/defendants. Therefore defendants had filed I.A.No.169 of 2011 in A.S.No.80 of 2008 to recall the Judgment and decree and re-hear the appeal. This application was dismissed by the learned Subordinate Judge, Ranipet by stating that after passing the Judgment, the Court had become functus-officio, this order was taken up on revision by the defendants before this Court in C.R.P.No.4104 of 2012. By an order dated 24.11.2014, this Court was pleased to allow the C.R.P. with a direction to the appellate Court to re-hear A.S.No.80 of 2008 on merits after affording opportunity to both parties within a period of three months from the

date of receipt of a copy of this order.

14. After the appeal was remitted and arguments were heard, it appears that the first appeal was transferred to the Subordinate Judge, Arakonam and re-numbered as 71 of 2015 and by a Judgement and decree dated 09.12.2015, the suit was remitted back to the District Munsif, Arakonam with a direction that the defendants should put forth their evidence within two months from the date of receipt of the remand order before the trial Court. Thereafter based on the evidence of both sides, the Judgment should be pronounced.

15. However, contrary to the directions of this Court, the petitioners were not going ahead with the evidence, despite lapse of period of 21 months from the date of receipt of the remand order.

16. The Defendants were filing one petition after another and were hell bent on dragging on the proceedings. The defendants cross examined the plaintiff elaborately on the settlement deed dated 12.04.2000 which according to them was sham and nominal document.

17. In fact, the petitioners had filed an application in I.A.No.95 of 2016 seeking to implead the plaintiff's mother Savithirammal and the Sub-Register, Arakkonam as parties to the suit. This petition was dismissed and against the dismissal order a C.R.P. was filed which was ultimately dismissed.

18. After the dismissal of the implead petition, the defendants had come forward with I.A.No.373,374 and 375 of 2017, which was filed for reopening the plaintiff side evidence, recalling the PW1 for further cross examination and for summoning Savithirammal, mother of the plaintiff to adduce evidence on the genuinity on the settlement deed dated 12.04.2000.

19. These applications were resisted by the plaintiff inter alia contending that the dragging of their feet by the defendants would clearly demonstrate their reluctance to proceed with the suit and their ingenuity in creating reasons for prolonging the case.

20. The plaintiff would contend that the order of remand only provided for the defendants to let in evidence, since it was on account

of their failure to submit evidence that the suit had initially been decreed. In fact the appellate Court had given a time frame of two months from the date of receipt of the order to complete the evidence and for the trial Court to pass Judgment. However, the defendants by dragging their feet has successfully prevented the Court below from giving effect to the order of remand.

21. After hearing the parties on either side, the learned District Munsif, Arakonam proceeded to dismiss all the three applications. The learned Judge had observed that even as early as on in the year 2002, the defendants had raised the defense that the settlement deed dated 12.04.2000 was a sham and nominal document and therefore they ought to have taken steps to prove the same particularly when the original decree had been appealed and the matter remitted back for the sole purpose of enabling the defendants to put forth their evidence.

22. Challenging the said orders, the defendants had filed C.R.P.No.83 of 2018. The revision was filed challenging the order in I.A.No.375 of 2017 which was an application to issue summons to

Savithriammal, the plaintiff's mother for examination with reference to the settlement deed dated 12.04.2000 by order dated 13.03.2018. This Court was pleased to dismiss the said revision. While dismissing the C.R.P., this Court has observed as follows:

"29. It is now well settled that the power to recall any witness under Order 18 Rule 17 C.P.C. can be exercised by the Court either on its own motion or on an application filed by any of the parties to the suit, but as indicated hereinabove, such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been recorded but to clear any ambiguity that may have arisen during the course of his examination.

8. In the case of Gayathri Vs. M.Girish reported in 2017 (4) CTC 321, the Hon'ble Supreme Court has held as follows.

"12. In the case at hand, it can indubitably be stated that the defendant-petitioner has acted in a manner to cause colossal insult to justice and to the concept of speedy disposal of Civil litigation. We are constrained to say the virus of seeking

adjournment has to be controlled. The saying of Gita "Avakel Arisel Oh Parhal" is apt here to be stated for guidance of Trial Courts. In view of the aforesaid analysis, we decline to entertain the Special Leave Petition and dismiss it with costs, which is assessed at Rs.50,000/- (Rupees fifty thousand only). The costs shall be paid to the State Legal Services Authority, Karnataka. The said amount shall be deposited before the Trial Court within eight weeks hence, which shall do the needful to transfer it to the State Legal Services Authority. If the amount is not deposited, the right of defence to examine its witnesses shall stand foreclosed."

9. *In the light of the decisions cited supra, the application has been filed to fill up the lacunae after the evidence of the plaintiff side and defendant side concluded. Therefore, when there is sufficient opportunity granted to the petitioner, pursuant to the Judgment and Decree in appeal suit in A.S.No.80 of 2008, the petitioner has chosen to file the application at the end of evidence of the both parties. Therefore, there is no reason or no materials placed before the court by filing belated application or reasons in the affidavit to*

entertain the Civil Revision Petition. Hence, the order of the court below is sustained. Therefore, there is no error or illegality in the order passed by the District Munsif Court, Arakonam.

10. In fine, the Civil Revision Petition fails and Civil Revision Petition is dismissed. No costs."

23. It is this order that is now the subject matter of the review. The memorandum of grounds of review application does not set forth any ground for reviewing the said order except for stating as follows:

a) The order only discusses I.A.No.373 and 374 of 2017 and not I.A.No.375 of 2017 which is an application filed summon to 3 party to adduce evidence.

b) that the matter should have been remitted for re-trial except for the above grounds, there is no ground that has been set forth as to what was the error apparent on the face of the record.

24. Admittedly a common affidavit has been filed for I.A.Nos. 373 to 375 of 2017 and the reasons given are common to all the three

applications.

25. Mr. R. Balasubramaniam, learned counsel who had entered appearance on behalf of the review petitioners had only raised the plea that this Court while considering the C.R.P.No.83 of 2018 has discussed only I.A.Nos.373 & 374 of 2017 to re-call and re-open application and not the application I.A.No. 375 of 2017 for summoning Savithirammal.

26. On hearing the arguments of the counsel and on perusing the papers, it is clearly evident that the review petitioner is only attacking the order in C.R.P.83 of 2018 as being erroneous and the review petitioner has not been able to make out as to how there is an error apparent on the face of the record. An erroneous order is subject to further challenge and the said order cannot be reviewed. That apart, while considering the review petition this Court has to consider as to whether the petitioner is putting forth a new important matter or evidence which despite exercise of due diligence was not within his knowledge and could not be produced at the time when the decree/order had been passed or on account of some mistake or error

apparent on the face of the record or for any other sufficient reason. The case on hand does not conform to any of these contingencies. The only ground pleaded is that the learned Judge has considered only the recall and reopen petition and not the petition seeking issue of summons. It is to be borne in mind that a common affidavit has been filed for all the three petitions and this Court while passing the order in C.R.P.No.83 of 2018 has considered the material contained therein and came to the conclusion that despite taking out the plea as early as in the year 2002 and after the time granted in the remand order having expired, the petitioner had come forward with the petition subject matter of challenge which is nothing but an attempt to protract the proceedings. I do not find any grounds for reviewing the order dated 13.03.2018 in C.R.P.No.83 of 2018. Accordingly, the Review Application stands dismissed. Consequently, connected Miscellaneous Petition is closed.

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04.06.2019

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Index : Yes/No

Speaking order/non-speaking order

P.T.ASHA, J.,

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