

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.10.2019

CORAM:

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

C.R.P.(PD)No.3309 of 2019

and

C.M.P.No.21470 of 2019

1.Poornam

2.Jayamosus Rajan

3.Chandrabai Rajam

4.Kepsibai Rajam

... Petitioners

Vs.

A.Senthur Kani

... Respondent

Prayer: Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 12.09.2019 passed by the learned Subordinate Judge, Mettupalayam, in I.A.No.3 of 2019 in O.S.No.162 of 2018.

For Petitioners : Mr.B.Hari Krishnan

For Respondent : Mr.M.Vijayakumar
For Caveator

ORDER

This revision petition has been filed against the fair and decretal order passed in I.A.No.3 of 2019 in O.S.No.162 of 2018 by the Subordinate Judge, Mettupalayam, by order dated 12.09.2019.

2.Before the Court below, the defendants in the suit in O.S.No.162 of 2018 filed the said application I.A.No.3 of 2019 to reopen the suit, which is already in the argument stage.

3.The suit is for declaration declaring the title over the suit property of the plaintiff and in the said suit, examination of witnesses was over and at that juncture, the present application was filed by the defendants to reopen the suit to mark certain documents, which has been rejected by the Court below through the impugned order, as against which, the present revision has been filed.

4.Heard Mr.B.Hari Krishnan, learned counsel appearing for the petitioners, who would submit that, the suit property originally belong to one Devasagayam who died. During the lifetime of Devasagayam, the plaintiff's mother-in-law claimed to have purchased the property by way of sale deed in the year 1981 from Devasagayam and based on which only, the title has been traced by the plaintiff in the suit and on that strength, the suit was filed for declaratory relief. In this context, it is the submission of the learned counsel for the petitioner that, the 1981 sale deed itself is a fraudulent sale deed. Therefore, in order to

enquire the registration of the said sale deed, the petitioner had filed a complaint before the Inspector General of Registration on 15.04.2019 and on receipt of such representation/complaint of the defendants, the Additional Inspector General of Registration , Chennai - 28, by his communication in Letter dated 30.04.2019, has replied stating that, the said complaint given by the defendants on 15.04.2019 had been forwarded to the District Registrar for enquiry under Section 68(2) of the Registration Act.

5.In this context, it is the case of the revision petitioners, as projected by the learned counsel for the petitioners that, the revision petitioners, who are the defendants in the suit wanted to mark the copy of the complaint given by the defendants before the I.G. of Registration and also the reply given by the Inspector General dated 30.04.2019 as documents, in order to have a comprehensive decision on the issue, which was framed in the suit as to whether the 1981 sale deed is genuine or not and therefore, only for the said purpose, since the said application has been filed by the revision petitioners/defendants. The said application, without having been considered in proper perspective by the Court below, has been dismissed through

the impugned order, hence the revision petitioners are before this Court assailing the said order and seeking indulgence of this Court.

6.The learned counsel for the petitioners would also submit that, if at all any petition to reopen the evidence is filed by the parties at any time in the suit, the same has to be accepted by the Court below and in this regard, whether genuine reason or proper or plausible reasons are there to allow to reopen the evidence or not can only be gone into by the trial Court and not by this Court exercising its superintendence power under Article 227 of the Constitution and therefore, the learned counsel seeks indulgence of this Court to set aside the said impugned order and allow the civil revision petition by directing the trial Court to reopen the case for marking the documents on behalf of the defendants.

7.Per contra, Mr.M.Vijayakumar, learned counsel for the respondent/plaintiff would submit that, the suit has been pending from 2013 and the trial has gone, evidences were closed and at the argument stage, now the present petition has been filed, that too, on the basis of a complaint given on 15.04.2019 before the I.G. of

Registration and his reply dated 30.04.2019, which are the documents created very recently for the purpose of dragging of the suit and therefore, on that score, since the said application to reopen the application was filed by the defendants/revision petitioners, the said application, having been considered in proper perspective, was rejected by the Court below, of course rightly and therefore, the said order does not require any interference from this Court.

8.I have considered the said submissions made by the learned counsel for both sides and I have perused the materials placed before this Court.

9.It is the case of the plaintiff/respondent before the trial Court that, in 1981, a sale deed was executed by one Devasagayam, who is admittedly the owner of the suit property, to and in favour of the mother-in-law of the plaintiff. After having got the property through the said sale deed, the mother-in-law of the plaintiff settled the property to and in favour of the wife of the plaintiff on 27.08.2012 and subsequently, the wife of the plaintiff settled the property to and in favour of the plaintiff/ husband on 23.11.2012. Therefore, the plaintiff

traced the title from 1981 sale deed till the settlement deed of the wife of the plaintiff dated 23.11.2012 and accordingly, sought for a declaratory decree.

10.In this context, it is to be noted that, it is an admitted fact that, the said Devasagayam was the original owner of the suit property who subsequently died. However, during the lifetime of the Devasagayam, it is the claim of the plaintiff that, the said Devasagayam sold the property in the year 1981 to the mother-in-law of the plaintiff.

11.Only in this context, the defendants set up a case stating that, the very sale deed, in the year 1981 itself, is a fraudulent sale deed and therefore, based on such fraudulent sale deed, the plaintiff cannot trace the title, therefore, he is not entitled for the relief of declaratory relief as sought for in the suit.

12.In this context, it is to be noted that, on the strength of the aforesaid sale deed as well as the subsequent settlement deed referred to above, since the plaintiff has laid the suit and the same had been

pending from 2013 onwards, where statements have been filed, issues were framed, trial conducted, witnesses were examined and at the time of argument stage, the present application had been filed.

13.It is a case of the revision petitioners/defendants that, the very sale deed of the year 1981 itself is a fraudulent sale deed, therefore, in order to enquire the same, a complaint had been given under the provisions of the Registration Act and accordingly, the complaint dated 15.04.2019 was given to the I.G. of Registration, who, on receipt of the same, in turn, having forwarded the said complaint to the District Registrar concerned for the purpose of enquiry under Section 68(2) of the Registration Act had intimated the said development through his communication dated 30.04.2019 to the defendants/revision petitioners.

14.Assuming for a moment that, there would be an enquiry under Section 68(2) of the Registration Act, ultimately even if anything found or not with regard to the alleged sale deed of the year 1981 between the Devasagayam and the mother-in-law of the plaintiff, concerned authorities of the Registration Department cannot set aside

the sale deed and based on which, it is for the parties to approach only the Civil Court to set aside the sale deed on the ground that, it was *prima facie* found as a fraudulent sale deed by virtue of the enquiry conducted by the Registration Department under Section 68(2) of the Act. Moreover, if an enquiry is conducted and conclusion arrived at, as contemplated under Section 68(2) of the Registration Act, that can be appealed by the aggrieved party and therefore, it cannot be said that, a quietus can be given by merely conducting an enquiry under Section 68(2) of the Registration Act.

15.Be that as it may, the said action to set the law in motion under the provision of the Registration Act has been made by the defendants/revision petitioners only by filing a petition on 15.04.2019. It is to be noted that, the suit has been pending from atleast 2013 and prior to that since the revision petitioners/defendants, being the legal heirs of the demised Devasagayam, could have very well known to the fact that 1981 some sale deed has been made and according to them, if it is a fraudulent sale deed, they could have taken steps to rectify the same in the manner known to law. Admittedly, no such move or attempt seems to have been taken by the revision petitioners/defendants.

16.Assuming that, atleast after filing the suit in the year 2013, where the revision petitioners had been shown as defendants, who are none other than the legal heirs of the Devasagayam, they could have taken steps to nullify the sale deed of the year 1981, if they felt that, it is a fraudulent sale deed, however no such steps had been taken.

17.Even the present move made by the revision petitioners/ defendants to file a petition before the I.G. of Registration could have been taken atleast for their satisfaction in the year 2013 or immediately, but, they have not taken any steps and they have participated in the suit proceedings, suit went on, trial was over and at the fag end i.e., on 15.04.2019, the present petition has been filed before the I.G. of Registration.

18.As has been discussed above, even if enquiry under Section 68(2) of the Registration Act, is conducted and some findings are given by the District Registrar concerned, to whom the issue has already been entrusted by the I.G. of Registration, such finding is not a conclusive one, as it is an appealable one under the provisions of the said Act itself.

19. Moreover, mere finding, assuming that, if it is given, pursuant to the 68(2) enquiry, that will not *ipso facto* give any leverage to the revision petitioners/defendants to claim title over the suit property on the strength of such findings given by the Registration Department under Section 68(2).

20. Therefore, this Court is of the considered view that, no useful purpose would be served in permitting the revision petitioners/defendants to file these two documents, as has been sought for in the application in question, that too, at this stage, where the suit is posted for arguments.

21. In that view of the matter, this Court finds no error, infirmity, illegality or perversity in the order passed by the Court below and therefore, it does not require any interference.

22. Moreover, this Court also feels that, the present attempt made by the revision petitioners/defendants, in view of all the reasons discussed above, is nothing, but an attempt to drag on the suit, for

which, this Court cannot exercise its jurisdiction, that too, under superintendence power conferred under Article 227 of the Constitution, therefore, on that ground also, this revision petition, in the considered opinion of this Court, deserves to be rejected.

23. Accordingly, this Civil Revision Petition fails and hence the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

21.10.2019

Index: Yes
Speaking Order : Yes

Sgl

To

The Subordinate Court,
Mettupalayam.

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R.SURESH KUMAR, J.

Sgl



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