

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:20.03.2019

Delivered on:07.06.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD)Nos.3678 & 3680 of 2018
&
C.M.P.Nos.20479 & 20482 of 2018

M/S.The Trust Association of the
Advent Christian Conference of India Pvt. Ltd.,
Rep. by its Director and Authorised Signatory
Rev. M.G.Baktha Singh,
AAM Compound, Gandhi Salai,
Velacherry,
Chennai - 600 042.

...Petitioner

Vs

Mr.Kamarasu

...Respondent

Prayer in C.R.P.No.3678 of 2018: Civil Revision Petition is filed under Article 227 of the Constitution of India against the Fair and Decreetal order dated 22.06.2018 passed by the learned VII Additional City Civil Judge, Chennai in I.A.No.11385 of 2017 in O.S.No.1246 of 2011.

Prayer in C.R.P.No.3680 of 2018: Civil Revision Petition is filed under Article 227 of the Constitution of India against the Fair and Decreetal order dated 22.06.2018 passed by the learned VII Additional City Civil Judge, Chennai in I.A.No.11387 of 2017 in O.S.No.1246 of 2011.

For Petitioner : Mr.P.T.Perumal

For Respondent : Mr.R.Thiagarajan

ORDER

The plaintiff is the revision petitioner before this Court. The suit was originally filed before this Court in C.S.No.1 of 2010 and later transferred to the file of the VII Additional City Civil Court, Chennai and re-numbered as O.S.No.1246 of 2011. The suit had been filed for the following reliefs:

"a)Declaring that the suit schedule property pathway is in the title, ownership, possession and enjoyment of the plaintiff company.

b)Permanent injunction restraining the defendant, his men, agents and anybody claiming under him from trespassing, encroaching and any other activity disturbing the peaceful possession and enjoyment of the suit schedule property by the plaintiff company.

c)Permanent injunction restraining the defendant, his men, agents and anybody claiming under him from putting up any further construction in the suit schedule property.

d)Mandatory direction directing the defendant to demolish the half constructed unauthorised brick arch at the entrance of suit schedule property in ECR and to dismantle the gate put up in the ECR entrance of the suit schedule property."

2.The present Civil Revision Petitions are filed challenging the order passed in I.A.Nos.11387 and 11385 of 2017, filed for re-opening the evidence in the suit and for an issue of Subpoena to various public authorities respectively. It is necessary to briefly allude to the facts preceeding the filing of the revisions and in this narrative the parties are referred to in the same litigative status as in the suit.

3.The case of the plaintiff is that, the plaintiff who is a missionary and charitable trust registered under Section 25 of the Companies Act, is the owner of the suit property (Which is a pathway). By virtue of a sale deed dated 17.03.1955, the foreign mission had purchased 45 cents of cemetery lands comprised in Paimash

No.1382/A along with the suit pathway. It is the case of the plaintiff that under a registered transfer deed dated 14.09.1977, the foreign mission had transferred the property and the suit pathway in favour of the plaintiff who has been in continuous possession and enjoyment of the same since then.

4.The suit property and other properties were not fenced by the plaintiff until recently and the lands were being used by the people to bring their dead to the cemetery through all approaches. The plaintiff would further submit that when the price of land was escalating on the East Coast Road, Chennai, the land owners around the plaintiff started enclosing their properties within compound walls. During the re-survey settlement, old Paimash No.1382/A was re-numbered as R.S.Nos.97/1A, 97/1B, 97/1C, 97/2, 97/3 and so on. The suit property was allotted R.S.No.97/1C.

5.It is the case of the plaintiff that the defendant had purchased vacant land measuring an extent of 38 cents comprised in R.S.No.97/3. This vacant land was situated behind a row of building facing the East Coast Road. The defendant was running a Hotel in the

name and style of "The Chettinad Treat" in this row of buildings. The hotel had a 18 feet frontage on the East Coast Road and the rear portion of the Hotel opened out into the 38 cents that was purchased by the defendant.

6.The plaintiff would contend that after the purchase of the above lands, the defendant was attempting to use the suit pathway which was running on the Northern boundary of the lands purchased by him. The plaintiff, thereafter, on verifying records found that the suit property was their exclusive property. Therefore on 03.12.2009, the plaintiff made necessary applications for the transfer of patta in their name. They found that the revenue authorities were putting off the process under one pretext or the other.

7.Meanwhile, on 23.12.2009, the defendant and his men started erecting an arch at the entrance of the pathway, to which the members of the Church protested. This was followed by a complaint before the Thiruvannamiyur Police Station. Despite such a complaint the defendant removed the gate and had also put the same under the arch and had started digging a sump in the middle of the pathway. The

Police directed the parties to settle their issues by 30.12.2007, failing which the Police authorities had threatened that a free hand would be given to the defendant. Therefore left with no other alternative the plaintiff had filed the above suit.

8.It further appears that the defendant had also filed a suit for bare injunction against the plaintiff and one Francis Thangadurai in O.S.No.13571 of 2009, in which the defendant would contend that the suit property had been purchased by him from one O.M.Shahul Hameed for a total sale consideration of Rs.1,50,00,000/- (Rupees one crore fifty lakhs) out of which a sum of Rs.70,00,000/- (Rupees seventy lakhs) had been paid by availing a loan from the Housing Development Financial Corporation Limited. The said property and other properties had been purchased by one Mohideen Fathima, the mother of Shahul Hameed under sale deeds dated 29.12.1973 and 30.04.1975.

9.In the year 1986, the Tamil Nadu Housing Board had initiated acquisition proceedings under award No.7/1986. Since the Housing Board had not taken possession of this property they had reconveyed

the same to Mohideen Fathima, the mother of Shahul Hameed under a re-conveyance deed dated 06.12.2000. By a deed of settlement dated 02.08.2007, she had settled the property on Shahul Hameed and he inturn had sold the property to the defendant on 09.05.2008.

10.The defendant had contended in his suit, that the plaintiff herein had attempted to encroach into the suit property and the same was prevented by him. It is the case of the defendant that the Pattai alone is the road/access used by the villagers to take their dead to the burial ground. The defendant had further contended that the plaintiff had once again attempted to trespass into the suit property on 28.12.2009, and therefore the defendant had come forward with the suit O.S.No.13571 of 2009.

11.The defendant had adopted the contention raised by him in his plaint O.S.No13571 of 2009, as a defense in the suit O.S.No.1246 of 2011. The defendant had also contended that a perusal of the sale deed dated 17.03.1955, would clearly indicate that the property had been described only with a Paimash number and not with a corresponding survey number. However, when the transfer deed was

executed by the foreign mission in favour of the plaintiff in the year 1977, there is a reference not only to the Paimash number but also to the survey numbers and it is seen that Paimash No.1382/A corresponds with R.S.No.97/2 and Paimash No.1368/A2 with R.S.No.99/2.

12.It is the defendant's contention that the suit property is situate in R.S.No.97/1C. The defendant would further state that on 06.12.2000, the Tamil Nadu Housing Board had re-conveyed 77 1/2 cents of the lands comprised in S.Nos.97/1C, 97/1A1A (part) and 97/3 (part) to Mohideen Fathima from out of the total extent of 2.65 1/2 acres in the various survey numbers acquired by them. After the re-conveyance, mutation has also been effected in the name of Mohideen Fathima and thereafter in the name of the son Shahul Hameed on whom she had settled the properties.

13.It is the further case of the defendant that there is a compound wall bifurcating the defendant's land and the cemetery and such a wall has been in existence for over thirty years. There is a road connecting the cemetery and the main ECR which is located south of

the main building and in local parlance is referred to as patta. The defendant would contend categorically that there is no access to the cemetery through their lands and therefore the suit was not maintainable. The defendant would raise yet another defense that the property in question has been described as a Government Poramboke land and in these circumstances the suit was not maintainable.

14. From a perusal of the records it is seen that the parties had gone to trial and after the evidence of D.W.1 was completed the plaintiff had come forward with the two interlocutory applications that are the subject matters of the present Civil Revision Petitions, namely I.A.No.11387 of 2017 for re-opening the evidence and I.A.No.11385 of 2017 for summoning the various public authorities to appear before the Court along with the records.

15. In the affidavit filed in support of I.A.No.11387 of 2017, the plaintiff would contend as follows:

"5. Now the plaintiff, wants to take summons to some Government officials to produce relevant records and give evidence. Therefore it is just and expedient that this Hon'ble Court may be

pleased to reopen the recording of evidence.

6.It is submitted that unless this Hon'ble Court reopens the evidence for calling Court witnesses we will be put to injustice and great loss."

This forms the reason for filing I.A.No.11387 of 2017, as regards the other application namely, I.A.No.11385 of 2017, the plaintiff in the affidavit filed in support of the said petition would submit that during the cross examination of D.W.1, the plaintiff had managed to elicit several controversial and conflicting facts on the basis of the documents marked by D.W.1 (the defendant).

16.The plaintiff would further submit that the documents in favour of the vendor of the defendant executed by the Tamil Nadu Housing Board had several irregularities as also the revenue documents given by the Revenue Department and these irregularities had been highlighted during the cross of the defendant's witness, D.W.1. In the affidavit filed in support of the said petition, the plaintiff would go on to cite instances of such discrepancies and irregularities.

17. Infact, in the affidavit filed in support of the said petition, from Paragraph No.5 the plaintiff has listed out the irregularities as contended by them. In view of these contradictions, it is the case of the plaintiff that the officials of the Housing Board, Housing and Urban Development Department of the Tamil Nadu government, the Tahsildar, The Sub-Inspector of survey has to be summoned to establish the above.

18. The said applications were resisted by the defendant inter alia contending that as early as in December 2009 as well as in April 2011, the defendant's case was out in the open and the plaintiff was very much aware as to how the defendant had traced his title to the property. The defendant would further reiterate that along with the written statement he had also produced the documents and the plaintiff had also extensively cross examined him on these documents.

19. The defendant would further submit that during the cross examination, six additional documents were marked in support of the contentions already raised by them and after completion of the

plaintiff's side evidence, the defendant had taken out the application for receiving additional documents and in all the defendant had exhibited 27 documents. The defendant would further contend that the plaintiff had not objected to any of the documents and had neither taken any application for amending the plaint nor seeking the appointment of an Advocate Commissioner and the present application is nothing but an attempt to fill up the lacuna. The defendant had further contended that the application to reopen evidence is not as a matter of course and that the plaintiff ought to have compelling reasons for seeking to reopen the evidence and without such reasons being put forth, the application deserved to be dismissed.

20. The learned VII Additional City Civil Judge, Chennai, by her order dated 22.06.2018, was pleased to dismiss the said applications. As regards the application filed in I.A.No.11385 of 2017, the learned Judge has observed that the subpoena petition has been filed with reference to the S.Nos.97/1A, 97/1B1, 97/1C, 97/3, 97/1B1VA, 97/1BVA and 97/1A1A part, whereas the suit relates only to S.No.97/1C and the present petition has been filed in support of survey numbers totally unconnected with the suit in question. The

learned Judge has further observed that the evidence in the above suit has been concluded and the application has been moved at the stage when the suit has been posted for arguments.

21. With reference to the application in I.A.No.11387 of 2017, the learned Judge has observed that once again the application seeks to expand the scope of the suit when the suit is filed only with reference to the properties comprised in S.No.97/1C. The learned Judge has observed that if the petition is allowed it would cause grave prejudice to the land owners of the other survey numbers who are in no way connected with the above suit.

22. Challenging the said orders the plaintiff is before this Court.

23. Mr.P.T.Perumal, learned counsel for the plaintiff would argue that under Ex.B.6, sale deed only an extent of 11 cents in S.No.97/1C and 48 cents in S.No.97/3 had been purchased by Mohideen Fathima, whereas, an extent of 2.62 1/2 acres had been acquired by the Tamil Nadu Housing Board and an extent of 77 1/2 cents had been re-conveyed to Mohideen Fathima while under Ex.B.6, she has only

purchased an extent of 48 1/2 cents. He would therefore argue that in order to substantiate the discrepancies, its imperative for the plaintiff to examine the above officials and it is for this reason that the application had been moved by the plaintiff.

24.Per contra, Mr.R.Thiagarajan, learned counsel appearing on behalf of the defendant would contend that the very relief claimed was not maintainable since the description of the suit schedule property is vague and incapable of being clearly identified and that therefore the relief of mandatory injunction cannot be executed in the unlikely event of the plaintiff succeeding in the suit.

25.He further argued that even in their written statement the defendant at paragraph Nos.6, 7 and 8 have clearly traced their title to the property and had also filed all the documents upon which they claim right to the property along with their written statement. He would argue that this written statement was filed as early as on 01.04.2011, from which date the plaintiff was put on notice about the defendant's right over the suit property.

26.It is also seen that the evidence of the defendant had commenced on 16.03.2016 and the cross examination had commenced on 04.10.2016, nearly a year thereafter the petitions which are now the subject matter of these revisions came to be filed. The counsel would further argue that the application for reopen has introduced new survey numbers.

27.It is his further case that as per the revenue records, T.S.No.97/2 has been described as graveyard measuring an extent of 0.20.50 ares. He would also draw the attention of this Court to the cross examination of P.W.1, who had admitted that the suit is being filed on the strength of Ex.A.1 and Ex.A.2 and that under Ex.A.2 what was sold was only lands in S.No.97/2. He has also admitted that they have not produced any documents to prove their ownership to the properties situate in S.No.97/1C. The learned counsel would therefore argue that in the light of this admission the very case of the plaintiff falls and it is for this reason and in order to over come the lacuna in the suit the plaintiff has come forward with the present applications.

28.He would further argue that there is no reason given in the petitions filed for reopening and for issuing subpoena to the various public authorities. He would rely on the Judgement in **Gayathri Vs. M.Girish** reported in **(2016) 14 SCC 142**, where the Honourable Supreme Court has come down heavily on parties adopting dilatory tactics by filing applications for additional evidence, adjournments, recording of evidence and for reopening and recalling witnesses. He would also rely on the Judgement in **Ram Rati Vs. Mange Ram (Dead) through Legal Representatives** reported in **(2016) 11 SCC 296** to advance his above arguments.

29.The decision of this Court in **C.R.P.No.2450 to 2455 of 2018** dated **12.02.2019** was also relied upon by the counsel for the defendant, wherein, this Court has observed that after relying on earlier precedents, moving revision petitions at the stage of arguments is nothing but an abuse of process of Court more particularly when the same is not germane to the issue on hand

30.He would therefore argue that the orders of the Court below does not require any interference.

31.Heard the counsels on either side and perused the papers. A perusal of the records would clearly reveal that the defendant had come to the Court with a specific case that they are the owners of the suit pathway and they have also traced their title to the suit property in their written statement and not stopping with this they have also filed the documents in support of their claim as early as in the year 2011 when they had filed their written statement.

32.It is further seen that the evidence of the plaintiff had commenced on 28.04.2012 and the defendant's evidence had commenced on 16.03.2016 and had concluded on 06.04.2017. All this while the plaintiff has not taken any steps to issue subpoena to these authorities more particularly when the defendant had filed his documents. No convincing explanations has been given for this delay in taking out these applications at this late stage in the suit. It is not the case of the plaintiff that they have come across some new point for argument, which disclose that they have not exercised due diligence.

33.The affidavit filed in support of the petition to issue summons to the authorities is also an example of astute drafting in as much as the plaintiff has tried to bring in the cross examination of D.W.1, as the reason for taking out these applications in such a late stage. It is no doubt true that the plaintiff has cross examined the defendant and elicited some admissions. However it is seen that the defendant has proceeded to claim ownership only on the basis of the documents that are already before the Court and he has also traced his title to the suit property in the written statement filed as early as in the year 2011. It is evident that the plaintiff by taking out such an application at a late stage is only trying to somehow fill up the lacuna in their case and protract the proceedings.

34.In the Judgement reported in **(2016) 11 SCC 296**, the Honourable Supreme Court has held that though the rigour of Order 18 Rule 17 of the Code of Civil Procedure does not effect the inherent powers of the Court to pass orders to achieve the ends of Justice, however such power has to be exercised circumspectly only in cases where it is absolutely necessary and where the benefits of the applicant is not in doubt.

35.This Court while disposing of **C.R.P.No.2450 to 2455 of 2018** has held that where the plaintiff was aware and already in possession of the documents even prior to letting in evidence, a duty is cast upon the applicant to file the application much earlier and not wait for the fog end especially at the stage of arguments.

36.From the orders of the Trial Court it is also evident that by seeking to reopen the evidence and issue summons to the various public authorities, the plaintiff is attempting to expand the scope of the suit to include survey numbers that are totally unconnected with the suit property.

37.The reasons for which the reopen is sought for was already available with the plaintiff as early as in the year 2011 and even before trial commenced the plaintiff could very well have taken necessary steps. The application to reopen the evidence is also bereft of reasons.

Considering the fact that the Civil Revision Petitions lack bonafides as I find no infirmity in the order passed by the Trial Court the Civil Revision Petitions stand dismissed. The order in I.A.Nos.11385 and 11387 of 2017 in O.S.No.1246 of 2011, of the VII Additional City Civil Judge, Chennai, is confirmed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petitions are also closed.

07.06.2019

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Index : Yes/No
Speaking order/non-speaking order

To,

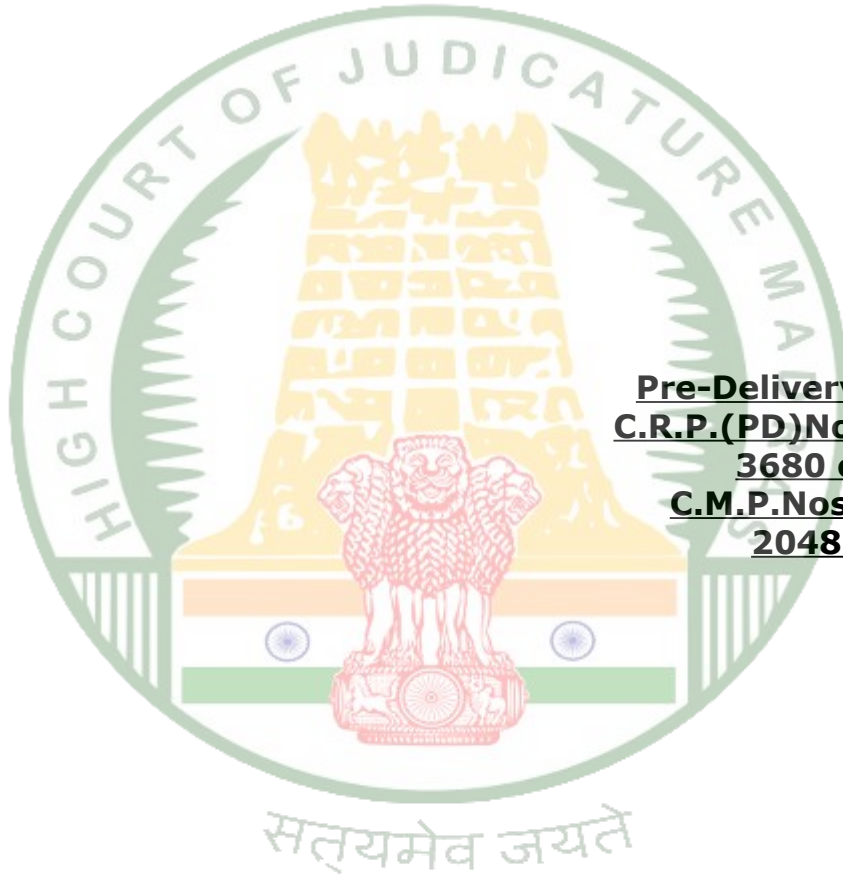
The VII Additional City Civil Judge,
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P.T.ASHA, J.,

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**Pre-Delivery order in
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3680 of 2018 &
C.M.P.Nos.20479 &
20482 of 2018**

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