



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.03.2019

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

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CRP (MD) .Nos.133 and 134 of 2019 (PD)

and

C.M.P. (MD) .No.604 of 2019

in

C.R.P. (MD) .No.133 of 2019

S.Mani

... Petitioner/Respondent/Plaintiff
in both C.R.ps

Vs.

Ebin Dhas

... Respondent/Petitioner/Defendant
in both C.R.Ps

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 28.11.2018 passed in I.A.Nos.415 and 416 of 2018 in O.S.No.133 of 2014 by the Principal District Munsif, Kuzhithurai, Kanyakumari District.

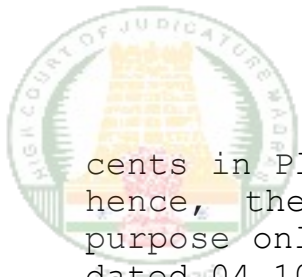
For Petitioner : Mr.K.Rajeshwaran
in both C.R.Ps
For Respondent : Mr.K.N.Thampi
in both C.R.Ps

COMMON ORDER

These Civil Revision Petitions have been preferred against the order dated 28.11.2018 passed in I.A.Nos.415 and 416 of 2018 in O.S.No.133 of 2019.

2.The revision petitioner as plaintiff has filed a suit in O.S.No.133 of 2014. The first respondent herein as defendant has filed two I.As. I.A.No.415 of 2018 was filed under Section 151 of the Code of Civil Procedure, to reopen the suit and I.A..No.416 of 2018 was filed under Order 8 Rule 1A(3) and Section 151 of the Code of Civil Procedure, to receive the documents.

3.In the said I.As., the petitioner/defendant has stated that the suit was posted for clarification and for production of sale certificate. During that time, the defendant's counsel has filed a memo along with document, dated 20.09.1993, executed by one Johnrose in favour of the defendant's father viz., Edwin Jeyadhas, stating that the petitioner/defendant had mistakenly produced the document, dated 04.10.1993, which was marked as Ex.B.2, instead of the document dated 20.09.1993. It is further stated that already the petitioner/defendant has stated in his written statement regarding the sale deed, dated 20.09.1993, by which, one Johnrose sold 26 ½



cents in Plot No.3 in favour of one Edwin Jeyadhas on 20.09.1993 and hence, the said document has to be marked. For the aforesaid purpose only, the case has to be reopened by replacing the document, dated 04.10.1993.

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4.The respondent/plaintiff has filed a counter statement stating that the property dealt with in the said sale deed, dated 20.09.1993 is not the suit property and hence, the purpose of filing the applications to reopen the case and to receive the document did not deserve any consideration. Further, it is stated that the two I.As have been filed only with an intention to harass the respondent/plaintiff and hence, the same have to be dismissed.

5.The trial Court has observed the purpose of filing of the petitions and also gone through the written statement filed by the petitioner/defendant and found that the defendant had pleaded about the sale deed, dated 20.09.1993 and nowhere he has pleaded about the document, dated 04.10.1993, which was marked as Ex.B.2 and now, the defendant sought to replace the sale deed, dated 20.09.1993, instead of the document, dated 04.10.1993, which is not related to the suit property and not necessary for the disposal of the suit. In such circumstances, the trial Court felt that there would not be any harm in replacing the document and it is necessary for adjudication in the place of document and by replacing this document the respondent/plaintiff would not be prejudiced in any manner because he will be given an opportunity for cross examination in respect of the document to be replaced namely sale deed dated 20.09.1993, and allowed the I.As.

6.On a perusal of the records, it is observed that the two I.As were filed by the defendant to substitute the sale deed, dated 04.10.1993, which was marked as Ex.B.2. The reasons stated by the defendant is that he did not notice the contents of the said document. The petitioner herein, who is aggrieved against the order passed in the said I.As, is also not aware about the contents of the document (Ex.B.2). For which, the counsel appearing in the said I.As have not stated that they have examined the witness in that aspect. Therefore, both the counsel appearing for the plaintiff as well as the defendant proceeded with the trial of the case. Hence, the negligence on the part of both the counsel for filing of the present Civil Revision Petition and the delay has been occurred and the case is posted at the stage of judgment.

7.In support of his contention, the learned counsel appearing for the first respondent/defendant has relied upon the judgment of the Hon'ble Apex Court in the case of **K.K.VELUSAMY VS. N.PALANISAMY** reported in **(2011) 11 Supreme Court Cases 275**, wherein it has been held that even when the case was posted for delivery of pronouncing judgment, the petitioner has every right to reopen the case.



8. Both the learned counsel appearing for the petitioner and the respondent have not placed their diligence, while marking the said document and during the time of examination, which resulted in filing of the present Civil Revision Petition, which caused so much of delay before the trial Court in disposing the case at the earliest. Hence, the petitioner is not aware of the case as well as the contents of the document, which was marked as Ex.B.2, which is not connected to the suit property, whereas, the learned counsel also sought permission to mark the said document without even verifying the contents, which shows that how the witness was examined and also marked the documents, which proved the negligence on their part.

9. In view of the above, this Court is of the view that on the negligence made by both sides, a cost of Rs.500/- is imposed and the said amount shall be paid by both the petitioner as well as the respondent to the Chief Justice Relief Fund within a period of two weeks from the date of receipt of a copy of this order. Hence, these Civil Revision Petitions are disposed of and the trial Court is directed to proceed with the case and dispose of the same at the earliest point of time. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (cs-II)

// True Copy //

Sub Assistant Registrar (CS-)

To

1. The Principal District Munsif,
Kuzhithurai,
Kanyakumari District.
2. The Record Keeper,
Madurai Bench of Madras High Court,
Madurai.

Copy To:

The Section Officer,
Account Section (Chief Relief Fund)
Madurai Bench of Madras High Court,
Madurai

+1cc to Mr.K.Rajeshwaran, Advocate, SR.No.55515

+2cc to Mr.K.N.Thampi, Advocate, SR.No.55242, 55243

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