



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 05.04.2019
CORAM :
THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

WEB COPY

CRP(MD) No.674 of 2019
and
C.M.P.(MD) Nos.3672 & 3673 of 2019

1.G.Selvaraj

2.Lalitha

3.S.Inithi

... Petitioners/Petitioners/Plaintiffs

vs.

1.The State of Tamil Nadu,
represented by the District Collector,
Kanyakumari District,
Collectorate,
Nagercoil.

2.The Tashildar,
Vilavancode Taluk,
Office at Kuzhithurai,
Kuzhithurai Post,
Kanyakumari District.

3.The Executive Officer,
Palappallam Town Panchayat,
Palappallam,
Palappallam Post,
Keezhmidalam Village,
Vilavancode Taluk,
Kanyakumari District.

4.Mohan Chandra Kumar

... Respondents/Respondents/Defendants

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order returning I.A.SR.No.6930 of 2018 in O.S.No.89 of 2012 dated 15.02.2019 on the file of the learned Subordinate Judge, Padmanabhapuram.

For Petitioner : Mr.C.Godwin
For R1 to R3 : Mr.J.Gunaseelan Muthiah
Government Advocate

ORDER

This Civil Revision Petition has been filed to set aside the order returning in I.A.SR.No.6930 of 2018 in O.S.No.89 of 2012 dated 15.02.2019 on the file of the learned Subordinate Judge, Padmanabhapuram.

2.Before the trial Court, the petitioners herein are the plaintiffs and the respondents herein are the defendants. For the sake of convenience, the parties will be referred to as per their rank before the trial Court.

3.In the affidavit filed in support of this petition, the plaintiffs contended that they have filed a suit in O.S.No.89 of 2012 for the relief of declaration of title, possession and for injunction. The plaint schedule property is having an area of 2 acres and 7 cents in R.S.Nos.226/16, 17 and 18 corresponding to old S.Nos.1880 & 1881, Keelmidalam Village, Vilavancode Taluk. The plaintiffs further contended that D.W1, the Deputy Tashildar, Vilavancode in the cross-examination has stated that he has not produced any old survey documents before the Court below to show that the suit properties are the Poramboke lands. Hence, the plaintiffs filed I.A.Nos.818 & 819 of 2018 to re-open the case and re-call D.W1 and I.A.SR.No.6930 of 2018 under Order XI Rule 14 CPC for directing D.W1 to produce old settlement register, old settlement plan and correlation statement for old survey Nos.1880 & 1881. The plaintiffs filed an application before the District Collector, the first defendant, for furnishing the above documents to produce the same in the said suit, but the same was not furnished. The trial Court numbered the applications for re-opening and re-calling D.W1, but the application filed under Order XI Rule 14 CPC for production of certain documents was not numbered.

4.The learned trial Judge on 05.01.2019, partly allowed the applications namely, production of correlation register but the learned Judge rejected the applications for production of old settlement register and old settlement plan. On verification of 'A' Register on 05.01.2019 and noted that the applications were disposed of as mentioned below:

"O.S.No.89 of 2012, I.A.Nos.818 & 819 of 2018 disposed in terms C/o.25.01.2019 recalling of D.W1 is restricted for the purpose of calling production of correlation register pertaining to old No.1880 of Keezhmidalam Village alone."

5.The plaintiffs applied for the copy of the order on 08.01.2019 for filing Civil Revision Petition. On 25.01.2019, a memo was filed before the Court below by stating that they have filed the revision against that orders. The learned trial Judge on 15.02.2019, dismissed both the I.As., stating that cost not paid and also returned the application in I.A.SR.No.6930 of 2018.



6. Further, the plaintiffs contended that the order copy was made ready only on 14.02.2019 and delivered on 15.02.2019, but the learned Judge dismissed the applications on 15.02.2019. On verification of 'A' register in the Court found that the 'A' register written in respect of orders in I.A.Nos.818 and 819 of 2018 on 05.01.2019 was subsequently cancelled and the same was inserted at the end of 04.01.2019 in the following terms:

"In the result petition will be allowed on payment of cost of Rs.3,000/- to Padmanabhapuram Taluk, legal service payable on or before 23.01.2019, failing which, the petitions dismissed automatically, call on 24.01.2019."

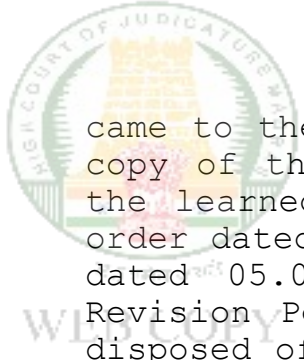
7. On hearing both sides, as per the own admission made by the plaintiffs, the said I.As., were allowed on 05.01.2019 by the trial Court on terms.

8. The contention of the plaintiffs is that they have applied the certified copy of the order dated 08.01.2019 for filing a Civil Revision Petition. On verification, the plaintiffs came to know that the said two I.As., were dismissed and returned I.A.SR.No.6930 of 2018 stating that cost not paid. While passing the order in the above said two I.As., the terms have not been complied with and hence, the application in I.A.SR.No.6930 of 2018 was returned.

9. The grievance of the plaintiffs is that on receipt of the certified copy of the order made on the above said two I.As., the plaintiffs came to know that the said applications were dismissed. On hearing both sides, it is observed that on 05.01.2019, the said two I.As., were disposed of on terms, whereas, the plaintiffs have received the certified copy only on 25.01.2019.

10. The plaintiffs themselves in their affidavit contended that since the order passed on 05.01.2019, they did not comply with the order and only after getting the certified copy of the order, they came to know about the allowing of the applications on 05.01.2019. On perusal of records, it is observed that the trial Court has considered the grievance of the plaintiffs and discussed the same in detail about the necessity and requirements of the plaintiffs' averments for production of documents, to re-open the case and recall D.W1. Further, recalling of D.W1 will serve no purpose to clarify the point agitated by the plaintiffs with reference to old settlement register and the Court ought to have given an opportunity in favour of the plaintiffs for causing production of correlation statement pertaining to old survey Nos.1880 and 1881 of the said Village. Considering the belated application and hardships caused to the Court, the petitions were disposed of on terms. Therefore, the order was made on 05.01.2019 and the same is very much known to the plaintiffs.

11. Therefore, the grievance of the plaintiffs by stating that there is some manipulation by the trial Court in changing the order and all of a sudden two petitions were disposed of and the said fact



came to the plaintiffs' knowledge only after applying the certified copy of the said order dated 05.01.2019 cannot be accepted, since the learned counsel for the plaintiffs was very well aware of the order dated 05.01.2019. Hence, making allegations against the order dated 05.01.2019 passed by the trial Court, the present Civil Revision Petition is filed and that two applications were already disposed of. Only to drag on the proceedings, the plaintiffs filed the present Civil Revision Petition and the plaintiffs have not acted with all diligence at the earliest point of time, but they have not approached the court with clean hands and proceeded with the case by merely blaming the Court and making such allegation, which cannot be not entertained.

12. Accordingly, this Civil Revision Petition is dismissed with cost of Rs.2,000/-. The petitioners herein/plaintiffs are directed to pay a sum of Rs.2,000/- to the credit of Chief Justice Relief Fund, Madurai Bench of Madras High Court, Madurai within a period of three weeks from the date of receipt of a copy of this order. The learned Subordinate Judge, Padmanabhapuram, is directed to dispose of the suit in O.S.No.89 of 2012 within a period of from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar(CS)

To

- 1.The Subordinate Judge,
Padmanabhapuram.
- 2.The Section Officer,
Accounts Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.C.GODWIN, Advocate (SR-59349[F] dated 05/04/2019)

+1 CC to M/s.SPL GP (SR-59523[F] dated 08/04/2019)

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DS(CS) : 08/05/2019/4P/5C