

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.03.2020

Coram

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CRP No.1155, 1156 and 1157 of 2020 and
CMP No.6231 of 2020

S.Lakshmiopathy ..Petitioner/Petitioner/Plaintiff

Vs.

1. V.K.Janakaraja
2. P.K.Viswanathan ..Respondents/Respondents/
Defendants

Prayer in CRP No.1155 of 2020: This civil revision petition has been filed under Article 227 of the Constitution of India to set aside the order and decreetal order dated 07.11.2019 passed in I.A.o.4 of 2019 in O.S.No.66 of 2014 by the Subordinate Judge, Perundurai.

Prayer in CRP No.1156 of 2020: This civil revision petition has been filed under Article 227 of the Constitution of India to set aside the order and decreetal order dated 07.11.2019 passed in I.A.o.5 of 2019 in O.S.No.66 of 2014 by the Subordinate Judge, Perundurai.

Prayer in CRP No.1157 of 2020: This civil revision petition has been filed under Article 227 of the Constitution of India to set aside the order and decreetal order dated 07.11.2019 passed in I.A.o.6 of 2019 in O.S.No.66 of 2014 by the Subordinate Judge, Perundurai.

For Petitioner : V.Balamurugan

COMMON ORDER

These civil revision petitions have been filed to set aside the order and decreetal order dated 07.11.2019 passed in I.A.No.4, 5 and 6 of 2019 in O.S.No.66 of 2014 by the Subordinate Judge, Perundurai.

2. The petitioner herein is the plaintiff in the original suit in O.S.No.66 of 2014 against the respondents/defendants before the Subordinate Judge, Perundurai to set aside the sale deed dated 20.01.2014 registered in the office of the Sub Registrar, Perundurai, as it is a invalid document.

3. In the above said suit, the defendants have filed their respective written statements and after examining witnesses on either side, the case was posted for arguments. At this stage, the petitioner herein filed petitions to reopen the case for examining PW1 and to recall the PW1 for giving evidence to mark a publication dated 25.05.2014 and also to condone the delay in filing the above said document. Those petitions have been dismissed by the Trial Court. Aggrieved over the same, the petitioner/plaintiff has filed the present civil revision petitions.

4. It is contended by the petitioner that at the time of filing the suit, he made a publication not to make any encumbrance upon the property by anybody, however, that publication was not marked due to oversight and hence the petitions may be allowed.

5. Per contra, it is resisted by the 2nd respondent that already the petitioner had filed a similar petition and the same was allowed. Now, at the stage of arguments, the petitioner again filed these petitions only to drag on the proceedings and hence the petitions are liable to be dismissed.

6. The learned counsel appearing for the respondents contended that the petitioner has filed the petitions only to rectify the defects of the case, but, he introduce the new pleadings through these petitions.

7. Head the learned counsel appearing for the petitioner as well as the respondents. I have perused the documents.

8. A perusal of the documents shows that while the case was posted for arguments, the petitioner/plaintiff had filed petitions to reopen the case and to examine the Sub Registrar, Perundurai and the same were allowed. Again the petitioner filed these similar petitions, during the stage of arguments to reopen the case and to recall PW1 to mark the publication and to condone the delay in marking the publication dated 25.05.2014. The suit is of the year 2014. The petitioner has not stated appropriate reasons for not marking this document, while the similar petitions had been allowed. Hence, the act of the petitioner clearly shows that he filed these petitions belatedly only to fill up the lacunae in the suit.

9. The trial court, in its order, has cited a decision in N.Sadasivam Vs. Samiyathal reported in 2014 - 30 TLNJ (civil) -116, in which, this court has held as follows.

" As per the decision of the Apex Court, inspite of due diligence, the petitioner is unable to secure the document and omit to state

then only, he is entitled to re-call the witness. But, in the instant case, as already stated, the revision petitioner filed the application to re-call the witness of PW3 which was allowed, and since the batta was not paid, it was subsequently dismissed. Thereafter, the revision petitioner filed another application to recall and reopen the evidence of PW1 with a view to fill up the lacuna, so, he is not entitled to any relief in this revision petition. So, the impugned order passed by the Trial Court does not warrant any interference, hence, it is hereby confirmed."

10. In view of the above decision and considering the facts of the case, this court does not find any fault on the decision made by the Trial court. Hence, the civil revision petitions are liable to be dismissed, as there is no merits.

11. In the result, the civil revision petitions in CRP No.1155, 1156 and 1157 of 2020 are dismissed and the orders passed by the trial court is upheld. No costs. The connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

mst

To
The Subordinate Judge,
Perundurai.

+1cc to Mr.V.Balamurugan, Advocate, SR. No. 23749

VBA (CO)
RMP (17/07/2020)

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