

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 03.03.2021

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P. (NPD) Nos.399 & 400 of 2021
and
C.M.P.No.3424 of 2021

A.Mylsamy ...Petitioner in both cases/
Respondent/Detendent

Vs

Deivasigamani Gounder ...Respondent in both cases/
Petitioner/Plaintiff

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedures to set aside the fair and final order passed by the learned District Munsif Court, Pollachi, Coimbatore District in E.A.Nos.1 & 2 of 2019 respectevly in E.P.No.4 of 2018 in O.S.No.23 of 2004 dated 21.01.2021.

For Petitioner : Mr.G.Ponnambalathiyagarajan
(in both cases)

O R D E R

While CRP No.399 of 2021 has been filed against the order dated 21.01.2021 made in E.A.No.1 of 2019 in E.P.No.4 of 2018 in O.S.No.23 of 2004, passed by the District Munsif Court, Pollachi, Coimbatore, in and by which the prayer of the petitioner for reopening the case has been dismissed, CRP No.400 of 2021 has been filed against the order dated 21.01.2021 made in E.A.No.2 of 2019 in E.P.No.4 of 2018 in O.S.No.23 of 2004, in and by which the prayer of the petitioner for condoning the delay in filing the additional written statement has been dismissed.

2. The said petitions were filed after A.S. No.15 of 2010 was allowed in favour of the respondent herein relating to allotment of shares in the property. After the judgment in A.S.No.15 of 2010, execution petition in E.P. No.4 of 2018 was filed by the respondent herein in relation to his share of the property. I.A.No.1023 of 2010 in O.S. No.23 of 2004 was filed for the appointment of Advocate Commissioner to cause inspection of the scheduled mentioned properties and to submit a report.

The Advocate Commissioner, so appointed, had inspected the property and submitted his report based on which execution petition, above mentioned has been filed. However, the present application has been filed by the petitioner herein before the trial court on the ground that though the petitioner is taking steps for filing second appeal before the High Court, however, in the meantime, Advocate Commissioner was appointed and the report of the Advocate Commissioner does not clearly state many revealing facts pertaining to pathway, etc., which came to the knowledge of the petitioner herein only later to his filing the written statement of defence, which prompted the petitioner herein to file the present petitions before the execution court.

3. The said petitions were resisted by the respondent herein that inspite of passing of judgment in A.S. No.15 of 10, though it is submitted that the petitioner is taking steps to file second appeal, however, no materials whatsoever has been placed before the Court to substantiate the said contention and the present petitions have been filed only to defeat the legitimate rights of the respondent herein and to drag on the proceedings. Though the report submitted by the Advocate Commissioner has been submitted long back, however, to scuttle the legitimate rights of the respondent herein to his share in the scheduled mentioned properties, the present petitions have been filed and, therefore, prayer was made for rejection of the said petitions.

4. The Court below, on consideration of the submissions of either side and on perusal of the materials on record, the court below held that though judgment was passed in the suit as early as on 10.11.2009 and order in I.A. No.1023 of 10 for appointment of Advocate Commissioner has also been passed on 01.08.2013, however, the petitioner had not raised any objections to the report of the Advocate Commissioner and has, through the present petitions, come before this Court belatedly, that too after a period of six years, which cannot be permitted and, accordingly, dismissed the petitions, against which the present revisions have been preferred.

5. Grounds, as was raised before the court below, have been raised before this Court, by the learned counsel appearing for the revision petitioner. It is the submission of the learned counsel for the revision petitioner that many of the discrepancies in the report of the Advocate Commissioner came to the knowledge of the revision petitioner only at a belated point of time, which caused the petitioner to move the present petitions before the court below and the delay is not wilful or wanton and not to drag the proceedings. It is submitted that this Court may afford one opportunity to the petitioner to put forth his case by allowing these petitions.

6. Heard the learned counsel appearing for the petitioner and perused the materials available on record as also the order passed by the court below.

7. A perusal of the order passed by the court below clearly reveals that though judgment was passed in the suit as early as on 10.11.2009 and order in I.A. No.1023 of 10 for appointment of Advocate Commissioner has also been passed on 01.08.2013, however, the petitioner had not raised any objections to the report of the Advocate Commissioner. Further, the appeal preferred against the said suit has also ended against the petitioner on 13.07.2011, whereinafter, the Advocate Commissioner was appointed in the interim application and order came to be passed in the year 2013. Though seven years have passed from the said date, it is contended by the petitioner that he is preferring appeal against the appellate order, however, no material whatsoever has been placed to substantiate the said stand. Further, after a delay of almost six years, the present petitions have been filed before the court below for the relief stated therein, by pleading ignorance, which cannot be allowed, as allowing such a plea would amount to defeating the rights of the respondent herein, as he had obtained favourable orders almost a decade back and is yet to enjoy the fruits of the said order. The court below, has rightly dismissed both the petitions and this Court, sitting in revision, is not inclined to interfere with the said order passed by the court below.

8. For the reasons aforesaid, both the civil revision petitions are dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sbn

To
The District Munsif Court,
Pollachi, Coimbatore.

+1 cc to M/s.S.Sendhil Kumar, Advocate Sr No.13318

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AAB (CO)
RG.22.04.2021 (3P/3C)