

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2021

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P. (NPD) No.833 of 2021

and

C.M.P.No.6930 of 2021

P.M.Rangasami ..Petitioner/Petitioner/Defendant

Vs

V.Ramkumar ..Respondent/Respondent/Plaintiff

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decree passed in I.A.No.471 of 2020 in O.S.No.215 of 2014 by the Principal District Munsif Court, Poonamallee.

For Petitioner

..

Mr.P.M.Rangasami,

(Party-In-Person)

For Respondent

..

No appearance

ORDER

Heard the petitioner who appeared as party in person through video conferencing.

2.The petitioner herein is the defendant in O.S.No.215 of 2014 which is now pending on the file of the Principal District Munsif Poonamallee. The said suit was initially instituted in the District Munsif Court, Ambattur in O.S.No.377 of 2012. The suit had been filed by the plaintiff, V.Ramkumar, seeking a judgment and decree against the defendant in the nature of a permanent injunction restraining the defendant who is the petitioner herein from interfering with peaceful possession and enjoyment of the suit property, namely, land and building measuring to an extent of 1626 Sq.ft out of 3274 Sq.ft in Korattur Village in Ambattur Taluk, Thiruvallur District.

3.The petitioner herein claimed that he is the owner of the suit property. He suddenly found that a building had come in the said premises and in this regard had raised questions which led to the institution of the suit by the plaintiff against him. The plaintiff claims title to the said property by way of various Sale Deeds particularly,

executed around the year 2006 by various individuals whom the petitioner herein claims fictitious persons. It is the case of the petitioner that the Sale Deeds are fraudulent Sale Deeds and that the plaintiff has no right or title over the suit property.

4.The suit had proceeded to the stage of tendering evidence. PW-1 was examined in chief and cross-examined by the petitioner herein. During the course of cross-examination PW-1 had stated that he would produce as witnesses, Vinodh Rajkumar, Janardhana Raju and R.C.Ramkumar who are the persons from whom the plaintiff traces title.

5.However, after the evidence of the plaintiff was closed, the plaintiff had not taken any steps to examine the said individuals as witnesses. This has caused much grievance to the petitioner herein who had expected those witnesses to graze the witness box thereby giving him an opportunity to cross-examine them and also put forth his case that the Sale Deeds relied on by the plaintiff are fraudulent documents.

6.Aggrieved by the fact plaintiff had not taken steps to

examine the said witnesses the petitioner herein originally filed I.A.No.861 of 2019. That was dismissed by an order dated 19.02.2020. Thereafter the petitioner herein also filed I.A.No.471 of 2020 to review the said order of the Principal District Munsif, Poonamallee. That application was also dismissed. Questioning that particular order, the present Revision Petition has been filed.

7.In the order of the learned District Munsif, it had been very clearly stated that under Section 114 of the CPC, a review can be maintained only when there is an error on the face of the order and that for the reasons stated to review the said order, review would not be maintainable.

8.Heard the petitioner herein, as stated who appeared as party in person. Naturally, being party in person, he was emotionally attached to the case and was not able to segregate the legal issues in the case. Perused the records produced.

9.The order of the learned Principal District Munsif Poonamallee, dated 22.12.2020 which is impugned cannot be called into question. It is on a very limited point, whether an earlier order can be reviewed or not. The reasons which the learned Principal District

Munsif had stated that the order cannot be reviewed are correct.

10.However, let me go a little further. The petitioner herein as a defendant can file necessary application to issue subpoena to summon as witnesses the named individuals. If subpoena is to be issued, the witnesses can be examined as Court witnesses, thereby giving an opportunity not only to the present petitioner but also to the plaintiff to cross-examine the said witnesses. Further if subpoena is issued and the subpoena is returned unserved, the petitioner herein can also call upon the learned Principal District Munsif, Poonamallee, to draw an inference that the said persons are fictitious persons and thereby also draw a further inference that the plaintiff had not examined the said individuals only because they do not either exist or if they appear, then they would speak adverse to the case of the plaintiff.

11.The petitioner herein can take advantage of Section 114(g) of the Indian Evidence Act, 1872 to that extent.

12.I am not convinced that the order under revision should be interfered with. Rather with the above observations, liberty is granted

to the petitioner to file necessary application to issue subpoena to the said individuals to appear and tender evidence as court witnesses and also seek liberty to cross examine the said witnesses and also seek liberty to call upon the learned Principal District Munsif, Poonamallee, to draw adverse inference in the event of their absence.

13. With the above observations, the Revision Petition is dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is also closed.

08.04.2021

Internet: Yes/No
Index: Yes/No
smv

To
The Principal District Munsif,
Poonamallee.

सत्यमेव जयते
WEB COPY

C.V.KARTHIKEYAN,J.

smv



C.R.P. (NPD) No.833 of 2021
and
C.M.P.No.6930 of 2021

सत्यमेव जयते

08.04.2021

WEB COPY