



IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	17.12.2021
<i>Pronounced on</i>	23.12.2021

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Civil Revision Petition (NPD) No.1260 of 2016

A.Venkatesan ... Petitioner

vs.

A.Rajagopal ... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Order and Decree made in I.A.No.48 of 2013 in A.S.No.31 of 2012, dated 03.02.2016 on the file of the Sub-Court, Gudiyattam, Vellore District.

For Petitioner : Mr.K.A.Ravindran

For Respondent : No appearance

ORDER

This Civil Revision Petition No.1260 of 2016 is filed challenging the Order and Decree dated 03.02.2016 passed in I.A.No.48 of 2013 in A.S.No.31 of 2012 on the file of the Sub-Court, Gudiyattam, Vellore District.



2. The Petitioner is the Appellant in A.S.No.31 of 2012. The Suit O.S.No.452 of 2005 was filed by the Petitioner/Plaintiff before the District Munsif Court, Gudiyattam. The said Suit O.S.No.452 of 2005 was decreed on 14.08.2012 by the District Munsif Court, Gudiyattam. Hence, challenging the said decree passed in O.S.No.452 of 2005 the Petitioner/Appellant filed the subject matter Appeal Suit A.S.No.31 of 2012.

3. The learned counsel for the Petitioner submitted that, the Petitioner/Appellant filed I.A.No.48 of 2013 under Order 41 Rule 27 of Civil Procedure Code to receive the schedule document and the said schedule document is the Patta dated 07.09.2001 issued by the Tahsildar, Gudiyattam in favour of the Petitioner/Appellant. He also submitted that, the Petitioner/Appellant has been residing in the 2nd item of the scheduled property for the past 20 years and to that effect, the Government has issued Patta on his favour on 07.09.2001. Since, the original Patta has been misplaced, it could not be filed before the Trial Court. Then, subsequently, the original Patta was traced out and the Petitioner/Appellant has come forward with this Petition I.A.No.48 of 2013 in A.S.No.31 of 2012 to receive the said document.



4. Learned counsel for the Petitioner further submitted that, the Petitioner/Appellant has filed the Suit for partition and separate possession to divide the Suit property into two equal shares and allot one such share to the Petitioner/Appellant in O.S.No.452 of 2005 on the file of the District Munsif Court, Gudiyattam and the said Suit was dismissed on merits observing that the property purchased by the Defendant under Ex.B2 is separate and self acquired property of the Respondent/Defendant.

5. Learned counsel for the Petitioner further relied on the Judgment of this Court in the case of ***S.N.Hasan Abubucker vs. Kottikulam St Mohideen Pallivasal Therkku Mohindeen Pallivasal, Nirvagi Muthuru Committee through its secretary M.S.Buhari and another*** reported in **2000 (III) CTC 193**, dated **11.02.2000**. For better appreciation the relevant paragraphs are extracted hereunder:

"15. Therefore, in the present case, the nature of the additional evidence placed before the Court is such that receiving them would be in the interest of justice to clear up the obscure areas of evidence and it would be undoubtedly a ground on which the appellate Court ought to have permitted reception of such evidence instead of having adopted a hyper-technical approach. The appellate Court having commented and rejected Ex.B.I, rental receipt as



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being appellate Court ought to have entertained the said additional evidence instead of rejecting it in the same breath.

16. Therefore, on an overall consideration I am inclined to feel that the appeal requires to be remanded not only for proper appreciation of evidence, but also to enable both the parties to adduce additional evidence for which purpose the appellate Court shall also permit the examination of witnesses. Both the parties are at liberty to adduce evidence in support of the mutual contentions of the basis of which the lower appellate Court would dispose of the appeal on merits. C.M.P.No.3835 of 1994 is closed with liberty to the appellant to file documents in evidence before the appellate Court subject to their relevancy and admissibility. The originals of the documents filed by the appellant shall be returned to the counsel for the appellant.

17. In the result, the Second Appeal is allowed and remanded to the lower appellant Court for disposal in accordance with above directions, within a period of three months from the date of receipt of a copy of this judgment. No costs."

6. Heard the learned counsel for the Petitioner.

7. The Patta dated 07.09.2001 was issued to the Petitioner/Appellant by the Tahsildar, Gudiyattam but the same was not produced before the Trial Court. Though, the Suit was decreed only on



14.08.2012 i.e., after 11 years there is no proper reasons given by the Petitioner/Appellant for the inordinate delay caused by the Petitioner/Appellant. Even the Suit A.S.No.31 of 2012 was filed on 15.10.2012 but the I.A.No.48 of 2013 which was filed only in the year 2013 to receive the additional document as evidence.

8. It is clear and evident from the Judgment in O.S.No.452 of 2005 observing that the property purchased by the Defendant under Ex.B2 is separate and self acquired property of the Respondent/Defendant and there is no proper and bonafied reason given by the Petitioner/Appellant herein for the inordinate delay of 12 years in filing the original Patta. Even assuming that the Patta is original and genuine but the fact remains that the Respondent/Defendant has purchased the Suit property under Sale Deed dated 07.02.1997 which has been marked as Ex.A1 which is much prior to the issuance of the said Patta in the year 2001. The Trial Court has rightly dismissed the I.A.No.48 of 2013 in A.S.No.31 of 2012 by an order and decree dated 03.02.2016.

9. On perusing the Judgment relied by the learned counsel for the Petitioner that the second appeal was allowed and the Appeal Suit was



remitted back to the Lower Court/Appellate Court for disposal in accordance with the above directions and the case on hand may also be decided on the lines of the above judgment.

10. The above judgment is not applicable to the present case for the reason that the additional document which the Petitioner/Appellant seeks to file is the original Patta dated 07.09.2001. In the above judgment the document need to be filed was the Rental Receipt as an additional evidence which is a vital document to dispose the case on merits. Moreover, according to the Respondent/Defendant, the schedule mentioned property has been purchased as early as 1977 and the same is a separate and self acquired property of the Respondent/Defendant and he is the absolute owner of the property which is marked as Ex.B2 before the Trial Court. The above facts were referred by the learned Subordinate Judge, Gudiyattam in I.A.No.48 of 2013 in A.S.No.31 of 2012 dated 03.02.2016, which was also observed by the learned District Munsif, Gudiyattam while passing the judgment and decree dated 14.08.2012, in favour of the Respondent/Defendant in O.S.No.452 of 2005 and the production of the original Patta at the Appeal stage will not in any way help the Petitioner/Appellant nor the Appellate Court in disposing of the Appeal on merits.



11. Considering the above facts and circumstances, the order and decree in I.A.No.48 of 2013 in A.S.No.31 of 2012 on the file of the Sub-Court, Gudiyattam is hereby confirmed. Hence, **this Civil Revision Petition stands dismissed.** No costs. Consequently, connected C.M.P.No.6953 of 2016 is closed.

23.12.2021

Index : Yes/No
Speaking Order : Yes/No
Internet : Yes/No
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To:

The Sub-Court,
Gudiyattam,
Vellore District.



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C.R.P(NPD)No.1260 of :



J.SATHYA NARAYANA PRASAD,J.

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Pre Delivery Order in
C.R.P.NPD.No.1260 of 2016

23.12.2021