

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P.NOS.1976 & 1977 OF 2021

AND

C.M.P.NO.15131 OF 2021

K.Punithavalli,
11/1, Adhinath Nagar,
Kolathur, Chennai - 99.

... Petitioner/2nd Defendant
(in both Petitions)

.Vs.

1. Kamalam,
W/o.Selva Nayagam,
No.173, 2nd Cross Street,
Dr.Ambedkar Nagar,
Kolathur, Chennai - 99.

... 1st Respondent/Plaintiff

2. The Chairman,
The Tamil Nadu Slum Clearance Board,
Chennai - 600 005.

... 2nd Respondent/1st Defendant
(in both Petitions)

PRAYER:-

Civil Revision Petitions filed under Article 227 of Constitution of India against the order passed in I.A.No.4 of 2021 in O.S.No.313 of 2004 and I.A.No.3 of 2021 in O.S.No.313 of 2004 respectively, dated 06.09.2021 by XIV Assistant City civil Court at Chennai.

For Petitioner : Mr.S.Rajendrakumar
(in both Petitions)

For Respondent : Mr.R.Manickavel (for R1)
(in both Petitions)

Mr.S.Prabhu (for R2)

C O M M O N O R D E R

These CRP.Nos.1976 & 1977 of 2021 have been filed challenging the orders passed in I.A.Nos.4 & 3 of 2021 in O.S.No.313 of 2004 respectively, on the file of the learned XIV Assistant Judge, City civil Court at Chennai.

2. Learned counsel for the Petitioner submitted that the Petitioner was allotted to an extent of 87.5 sq. mt., in Plot No.144, Kannagi Nagar. The 1st Respondent filed O.S.No.313 of 2004 seeking relief of declaration that the 1st Respondent/Plaintiff is the allottee in respect of schedule mentioned plot and entitled to all rights of an allottee under the Tamil Nadu Slum Clearance Board and decree for permanent injunction restraining the second defendant interfering with the Plaintiff's possession and enjoyment of the schedule mentioned plot as an allottee under the Tamil Nadu Slum Clearance Board. The allotment ordered in favour of the Petitioner was altered and after deviation it was allotted to the 1st Respondent. The Petitioner preferred W.P.No.6103 of 1999 and W.P.No.79 of 2004 seeking direction to the Tamil Nadu Slum Clearance board represented by the Estate Officer to execute a sale deed in favour of the Petitioner and calling for the records in respect of the impugned order dated 23.06.2003 made in Se.Mu.Ka.No.6431/E3/03 of the Chairman, Tamil Nadu Slum Clearance Board and quash the same. The said Writ Petitions were allowed by this Court. Against the order passed in the Writ Petitions, the 1st Respondent filed W.A.No.615 of 2015 and 3448 of 2019 and they are pending. Meanwhile, the Petitioner filed Petition under Section 10 of CPC for staying further proceedings in O.S.No.313 of 2004 for the reason that once Writ Petitions are disposed, the issue between the Petitioner and the 1st Respondent would be once for all over. The said Petition was dismissed. Against the said order, revision in CRP.No.2454 of 2013 was filed and the said Petition was dismissed on 31.08.2020 with the direction to the learned XIV Assistant Judge, City Civil Court, Chennai to dispose of the case within a period of two months and then it was extended for another six months.

3. It is the further submission of the learned counsel for the Petitioner that despite giving sufficient opportunity to give evidence, the 2nd Respondent/1st Defendant in the Suit has not chosen to give evidence and the evidence of the 2nd Respondent was closed. The Petitioner side evidence was closed and the matter is pending for arguments. The issue between the parties would be resolved only if the stand of the 2nd Respondent is made known to the Court. In the absence of examination of the

2nd respondent or any responsible person from the Tamil Nadu Slum Clearance Board, it is not possible for the Court to arrive at a right conclusion. Therefore, the Petitioner filed I.A.Nos.3 & 4 of 2021 for reopening the case and to issue sub-poena to the 2nd Respondent. Both the Petitions came to be dismissed. Against the said dismissal order only these CRPs are filed.

4. Learned counsel for the Petitioner reiterated that unless the 2nd Respondent or any other responsible person from the 2nd Respondent's Board is examined, it is difficult for the Court to decide the rival claim of the parties. He further submitted that in the written statement filed by the 2nd Respondent, it was specifically pleaded by extracting Section 65 of the Tamil Nadu Slum Clearance Board Act 1971 that the Suit is not maintainable. Therefore he prays for allowing of the applications and for sending sub-poena to the 2nd Respondent.

5. In response, learned counsel for the 1st Respondent submitted that the Petition filed by the Petitioner for sending sub-poena to the 2nd Respondent is not reasonable and not maintainable. In this regard he relied upon the judgment in the case of Minor Arumugam @ Logesh & Another Vs. State Bank of India & Others, reported in 2005 (5) CTC 773 for the proposition that calling the opposite party as witness cannot be accepted. Relevant paragraph of the said judgment reads as follows:

"18....

Practice of calling the opposite party as a witness should not be countenanced as it is not in the interests of justice." and in the second decision, it is said: "It is true that if a party refuses to voluntarily give evidence, he cannot be compelled to do so at the instance of the opposite party, as the Court is always at liberty to draw an inference against the party, who refuses to give evidence voluntarily."

In both the cases, it appears, the parties sought to be summoned as witnesses by other side were the real opponents and therefore, compelling such parties to give evidence on behalf of other party, is not desirable judicially, which view I should also endorse. But if the parties sought to be summoned are not the real opponents, then there may be relaxation for very good reasons. Thus analysing the provisions contained in Order 16, Rule 21, C.P.C. and also the decisions brought to my notice, I conclude that in certain cases, a party to a suit

can invoke Order 16, Rule 21, C.P.C, but not always, as of right and it all depends upon the purpose for which he is summoned and the stand taken by the party in the suit. At the risk of repetition, it could be said, if the party, who is desirous of examining another party as witness, has no conflicting interest, whereas the party to be summoned is supporting the other party, who is seeking the aid of Order 16, Rule 21, C.P.C, the Court could very well issue summons and not in the case where there is conflicting interest or no defence at all, as in this case."

There is no second opinion with regard to the observation that practice of calling of opposite party as witness should not be countenanced as it is not in the interests of justice. However, in the case before hand, the Petitioner is not calling the opposite party as witness. The Petitioner is calling the 2nd Respondent as witness, that too after 2nd Respondent has failed to give evidence.

6. In the above facts and circumstances of the case, the rival claim stated by the parties in respect of the suit property and the nature of the claim, examination of the 2nd respondent or any responsible person from Tamil Nadu Slum Clearance Board is absolutely necessary for adjudicating the real issue between the parties. In this view of the matter, this Court finds that both the impugned applications have to be allowed and therefore, order passed in I.A.Nos.3 & 4 of 2021 in O.S.No.313 of 2004 dated 06.09.2021 by the learned XIV Assistant City Civil Court, Chennai are set aside. Both the applications viz., I.A.Nos.3 & 4 of 2021 in O.S.No.313 of 2004 are allowed.

7. Accordingly, Both the Civil Revision Petitions are allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sai

To

The XIV Assistant Judge,
City Civil Court,
Chennai.

+2ccs to Mr.S.Prabhu, Advocate, S.R.No.52833 & 52834

+2ccs to Mr.S.Rajendrakumar, Advocate, S.R.No.52382 & 52383

CRP.NOS.1976 & 1977 OF 2021 AND
C.M.P.NO.15131 OF 2021

CP(CO)
PBS/01/11/2021