



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.10.2021

CORAM

THE HONOURABLE MR.JUSTICE **A.D.JAGADISH CHANDIRA**

CRP (MD) Nos. 1532 and 1533 of 2021

and

CMP(MD) No. 8455 of 2021

Chellappan

... Petitioner in both petitions

vs

1. Rajakumar
2. Pushpakumari
3. Rajan
4. Anu
5. Rabi Nadar
6. Rajakumari
7. Jayaraj

... Respondents in both petitions

Prayer in CRP(MD) No.1532 of 2021: Civil Revision Petition filed under Section 227 of the Constitution of India of the Code of Civil Procedure to set aside the order and decree dated 15.09.2021 of the learned Principal District Munsif, Kuzhithurai made in I.A. No.2 of 2019 in O.S. No.349 of 2014.

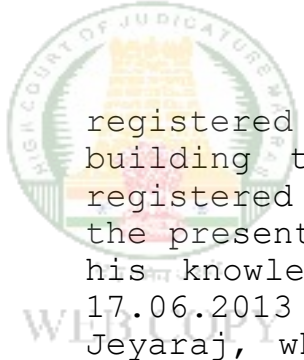
Prayer in CRP(MD) No.1533 of 2021: Civil Revision Petition filed under Section 227 of the Constitution of India of the Code of Civil Procedure to set aside the order and decree dated 15.09.2021 of the learned Principal District Munsif, Kuzhithurai made in I.A. No.3 of 2019 in O.S. No.349 of 2014.

For Petitioners : Mr.K.N.Thampi

COMMON O R D E R

The revision petitions have been filed against the dismissal of the petitions filed for reopening the evidence and recalling of PW 1 for further cross examination.

2. The learned counsel for the petitioner would submit that the petitioner is added as additional seventh defendant in the suit. The suit is for declaration of title and recovery of possession and other reliefs. The plaint scheduled property originally belonged to one Yovas Nadar. After the death of Yovas Nadar, plaint scheduled property devolved on his only son Rabi Nadar. The said Rabi Nadar and his two daughters, the first and the fifth defendant entered into a registered partition deed on 08.11.1990. In the partition deed, 'A' Schedule 3 cents was allotted to Rabi Nadar/4th defendant, 'B' Schedule 5 cents with building was allotted to the 5th defendant /Rajakumari and 'C' Schedule 5 cents allotted to the 1st defendant Pushpakumari. The 1st defendant out of her 5 cents in the above property sold 4 cents to one Seekumari on 03.04.2000. The 4th defendant Rabi Nadar and the 5th defendant Rajakumari sold 5 cents and a building to Sreekumari on 27.11.1998 under a



registered sale deed. Then the said Rajakumari sold 3 cents with building to this petitioner /defendant on 17.07.2006 under a registered sale deed for a valid consideration. In the sale deed, the present plaintiff Rajeshkumar was the attesting witness and with his knowledge and consent the same was executed. Thereafter, on 17.06.2013 the petitioner had sold about 3cents with building to one Jeyaraj, who is the 6th defendant in the suit under the registered sale deed for a valid consideration. Subsequently, the petitioner had purchased the above 3 cents with building from Jeyaraj on 19.04.2016 under a registered sale deed for a valid consideration. From the date of above sale, the petitioner is in possession and enjoyment of the above property and building as absolute owner.

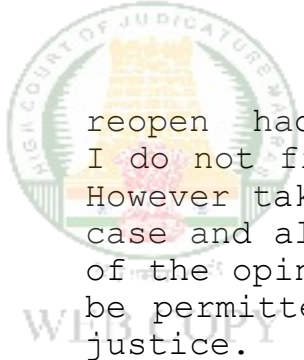
3. During the course of trial, the petitioner was added as 7th defendant on the petition being filed by him. The plaintiff has suppressed certain material facts and documents in the suit and thereby the plaintiff had disturbed the peaceful possession and though the plaintiff had attested as witness in the sale deed he had now denied the signature in the documents. The petitioner, due to inadvertence, had left to put certain important vital questions to the plaintiff/respondent, thereby the petitioner had filed petitions to reopen the evidence and recall PW.1 for further cross examination. The petitioner had stated reasons for which he required to recall PW.1. However the Trial Court stating that the suit was filed during the year 2014 and that PW. 1 was fully cross examined and that PW. 2 to PW.5 were examined on behalf of the petitioner and that the case stands posted for arguments and further holding that no reasons has been stated by the petitioner for recall had dismissed the application.

4. The learned counsel would further submit that the petitioner had specifically stated that certain important questions were left to be put to PW. 1, whereas the Trial Court had wrongly held that the petitioner had not stated any reasons. Though admittedly there had been some lapses and delay on the part of the petitioner it is just and necessary and expedient in the interest of justice, the petitioner has to be given one chance to recall and cross examine the plaintiff /PW.1 If PW.1 is not allowed to be recalled and cross examined the petitioner would be very much prejudiced. The learned counsel for the petitioner would submit that the petitioner also undertakes to compensate for the delay by paying costs to the witness and he also undertakes that the witness will be cross examined on the same day on his appearance before the Court and arguments will also be advanced in the case on the same day or any day fixed by the Court. He would further submit that now the case stands posted to 11.11.2021 and the petitioner is prepared to cross examine PW.1 and advance arguments of the same day itself.

5. Heard the learned counsel appearing for the petitioner and persued the materials available on record.

<https://hcservices.ecourts.gov.in/hcservices/>

6. The Trial Court finding that the petitions to recall and



reopen had been filed belatedly had rightly dismissed the petition. I do not find any infirmity in the order passed by the Trial Court. However taking into consideration the facts and circumstances of the case and also the undertaking given by the petitioner, this Court is of the opinion that the case may be re-opened and the petitioner may be permitted to recall and cross examine PW.1 in the interest of justice.

7. In view of the same, the Civil Revision Petitions are allowed and the order passed by the learned District Munsif, Kuzhithurai in I.A.No. 2 and 3 of 2019 in O.S. No.349 of 2014 stands set aside on the following terms:

i) The petitioner shall pay a sum of Rs.5000/- (Rupees Five Thousand only) as costs to the plaintiff/ PW.1 on or before 10.11.2021.

ii) on such payment and proof being filed, the Trial Court shall fix the date for appearance of the plaintiff and on appearance of the plaintiff/PW.1 the petitioner shall cross examine him on the same day and also advance his arguments on the same day or any other date fixed by the Trial Court.

iii) In the event the petitioner fails to cross examine PW.1 on the date of his appearance the petitioner shall lose his chance of cross examination of PW.1. No costs. Consequently connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

The Principal District Munsif, Kuzhithurai

+1 CC to M/s.K.N. THAMBI, Advocate (SR-32912[F] dated 27/10/2021)
CRP (MD) Nos. 1532 and 1533 of 2021
and
CMP (MD) No. 8455 of 2021
27.10.2021

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