



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.07.2021

Delivered on : 15. 07.2021

CORAM:

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (MD) No. 1606 of 2017

and

C.M.P. (MD) No. 9087 of 2017

B. Deva Pradheep

... Petitioner / Petitioner /
Plaintiff

Vs.

J. Ganasigamony

... Respondent / Respondent /
Defendant

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order, in I.A.No.422 of 2017 in O.S.No.88 of 2008, on the file of the learned Principal Subordinate Judge, Padmanabhapuram, Kanyakumari District, Dated 28.07.2017.

For Appellant : Mr.S.Saji Bino

For Respondent : Mr.V.Meenakshi Sundaram

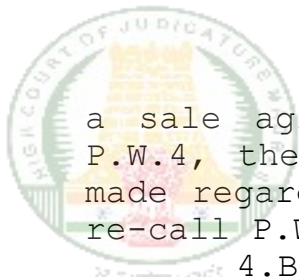
ORDER

This Civil Revision Petition is filed against the order, in I.A.No.422 of 2017 in O.S.No.88 of 2008, dated 28.07.2017, on the file of the learned Principal Subordinate Judge, Padmanabhapuram, Kanyakumari District.

2.The revision petitioner herein is the plaintiff and the respondent herein is the defendant in the suit. The plaintiff has filed a suit in O.S.No.88 of 2008 and the case was pending for argument. At that stage, the plaintiff has filed three petitions (i) I.A.No.421 of 2017, for re-opening the case, (ii) I.A.No.422 of 2017, for recalling the witness P.W.4, (iii) I.A.No.423 of 2017, for expert opinion. All the three petitions were tried together and the trial Court allowed I.A.Nos.421 and 423 of 2017, but dismissed I.A.No.422 of 2017. Against the same, the petitioner has approached this Court.

3.Brief substance of the petition in I.A.No.422 of 2017, is as follows:-

The case is for specific performance of a Contract on the basis of a sale agreement, dated 07.05.2008. The defendant executed



a sale agreement on behalf of the owner. After examination of P.W.4, the plaintiff came to know that some wrongful entries were made regarding the property in R.S.No.249/18 and it is necessary to re-call P.W.4 again, regarding the wrongful entries.

4. Brief substance of the counter in I.A.No.422 of 2017, is as follows:

The owner of the property never directed the defendant to execute any sale agreement in favour of the plaintiff. P.W.4 was examined in Chief and he was cross-examined. The cross-examination was concluded on 20.10.2009. The order of the Revenue Divisional Officer alleged to have been passed during the pendency of the suit is absolutely irrelevant and immaterial. Only to drag on the case, the plaintiff is filing so many I.A. Petitions.

5. After hearing both sides, the trial Court held that recalling of P.W.4, at the stage of argument, is not necessary and dismissed the petition in I.A.No.422 of 2017. Against the same, the petitioner preferred this Civil Revision Petition.

6. On the side of the revision petitioner, it is stated that the property in new Survey No. 249/22, Lakshmipuram Village, with an extent of 18 $\frac{3}{4}$ cents belonging to the grand-mother of the plaintiff and the grand-mother has executed a partition deed, dated 30.12.1976, wherein, 'B' Schedule property comprising item No.1 in Survey No.249/22 with an extent of 7 cents was given to the mother of the revision petitioner. The Land Survey Settlement clearly reveals that the grand-mother of the petitioner owned 18 $\frac{3}{4}$ cents in Survey No.249/22. After the death of his mother, the petitioner succeeds to the property, the balance 11 $\frac{3}{4}$ cents of property was allotted to the share of Vimala, as per the registered partition deed, dated 30.12.1976.

7. The respondent / defendant forged the signature of Vimala and has obtained a patta with regard to the property that belong to P.W.4. Vimala Livingston is a Citizen of U.S.A.. Regarding the forgery of the document, one Rajendran, who is the relative of the said Vimala Livingston had given a report to Tahsildar, Kalkulam. Patta transfer request was also forged. After enquiry, the Revenue Divisional Officer set aside the forged patta by the order dated 07.10.2011. The petitioner wants to recall P.W.4, regarding the proceeding of the Revenue Divisional Officer. The revision petitioner was not aware of the proceeding at the time of filing of the case or at the time of examination of P.W.4. If P.W.4 was not allowed to be recalled, the same will lead to illegality or miscarriage of justice. The proceeding correspondent to Survey No.249/18 is necessary to decide the issue in the suit and hence, the order in I.A.No.422 of 2017 has to be set aside.

8. On the side of the revision petitioner, it is further stated that though a specific plea was not raised, if it is covered by an issue by implication may also to be proved by evidence. A judgment of the Hon'ble Supreme Court reported in A.I.R. 1966 SC 735, is cited, wherein, it is stated as follows:-

"If a plea is not specifically made and yet it is covered by an issue by implication and the parties knew



that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle the party from relying upon it if it is satisfactorily proved by evidence"

9. On the side of the revision petitioner, it is further stated that a decree obtained by playing fraud is a nullity and it can be challenged in any Court, even in a collateral proceedings. A judgment of the Hon'ble Supreme Court reported in A.I.R. 1966 SC 735 is cited, wherein, it is stated as follows:-

"that fraud avoids all judicial acts, ecclesiastical or temporal and further it is settled proposition of law that a judgment or decree obtained by playing fraud on the Court is a nullity and non-est in the eye of law, such judgment or decree by the first Court or by the highest Court has to be treated as nullity by every Court, whether superior or inferior and it can be challenged in any Court even in collateral proceedings."

Another similar Judgment published in A.I.R.-2007-SC-1546 is also cited.

10. On the side of the respondent, it is stated that when the case was pending for trial, the revision petitioner has come forward with three I.A. Petitions. Two of the petitions were already allowed by the trial Court. P.W.4 was examined and was cross-examined and the evidence was concluded on 20.10.2009 itself. Reason for re-calling P.W.4 is stated as giving evidence regarding patta proceedings of the Revenue Divisional Officer. The clarification regarding the patta proceeding has nothing to do with the case. Documents after the suit will not have any bearing on the case and prayed the revision petition to be dismissed.

11. It is seen that the revision petitioner wants to recall P.W.4 to give evidence regarding a patta proceeding of the Revenue Divisional Officer. The entire proceeding was after the filing of the suit. The trial Court has given a finding that clarification over the particular point raised by the revision petitioner has nothing to do with the issue involved in the case. The proceeding is after the filing of the suit and proceeding has no direct connection with the issues involved in the case.

12. In the above circumstances, there is nothing sufficient enough to set aside the order passed by the trial Court. Hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)



To

The Principal Subordinate Judge,
Padmanabhapuram,
Kanyakumari District,

Copy to

The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2C)

+1 CC to M/s.V.Meenakshi Sundaram, Advocate (SR-23066[F] dated
19/07/2021)

C.R.P. (MD) No.1606 of 2017
15.07.2021

RC (26.07.2021) 4P-5C