



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 16.08.2021
Delivered On : 27.10.2021

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CORAM:

THE HONOURABLE **MRS. JUSTICE R. THARANI**

C.R.P.(MD)Nos.2625 and 2626 of 2017
and
C.M.P.(MD)No.12088 of 2017

K.Gunasekar ... Petitioner / Petitioner /
Defendant in both C.R.P

Vs.

Saradha
through her power agent
M.Karthikeyan ... Respondent / Respondent /
Plaintiff in both C.R.P.

Common Prayer: These Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decreetal order, dated 09.11.2017, passed in I.A.Nos.927 and 928 of 2017 in O.S.No.907 of 2014, on the file of the Principal District Munsif, Tiruchirappalli.

(In both)
For Petitioner : Mr.R.Sundar Srinivasan
For Respondent : Mr.J.Anand Kumar

COMMON ORDER

C.R.P.(MD)No.2625 of 2017 is filed against the order, dated 09.11.2017, passed in I.A.No.927 of 2017 in O.S.No.907 of 2014, on the file of the Principal District Munsif, Tiruchirappalli.

2.C.R.P.(MD)No.2626 of 2017 is filed against the order, dated 09.11.2017, passed in I.A.No.928 of 2017 in O.S.No.907 of 2014, on the file of the Principal District Munsif, Tiruchirappalli.

3.I.A.No.927 of 2017 was filed for adducing further evidence on the side of the defendant. I.A.No.928 of 2017 was filed for production of the original sale deed, dated 17.10.1975 executed in favour of Nallathambi by one Periyasamy and to issue summon to the Revenue Divisional Officer. Both the I.A. petitions filed by the defendant in the suit, were dismissed by the trial Court.



4. The revision petitioner herein in both the Civil Revision Petitions is the defendant in the suit and the petitioner in the I.A. petitions and the respondent herein in both the petitions is the plaintiff in the original suit and the respondent in the I.A. petition.

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5. Brief substance of the petition in I.A.No.927 of 2017 is as follows:-

5.1. A suit in O.S.No.93 of 2014 was filed by the plaintiff for declaration that the two sale deeds in favour of the defendant, dated 31.05.2002 and 01.07.2002, are void and for consequential relief of permanent injunction. This suit in O.S.No.907 of 2014 is a counter blast to the suit filed by the petitioner in O.S.No.93 of 2014. The petitioner filed a petition in I.A.No.736 of 2016 for production of passport by summoning the R.D.O., Trichy and to produce the original sale deed in favour of Nallathambi executed by Periyasamy.

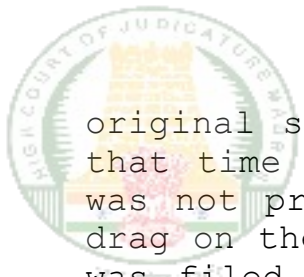
5.2. A summon was sent to the R.D.O. to produce the original sale deed in favour of Nallathambi and to produce the passport of Nallathambi. One Subordinate staff of the R.D.O. office, Trichy, appeared and produced the original passport alone and he had reported that the original sale deed in favour of Nallathambi was not available in their custody. The suit stands posted to 26.10.1997 for arguments. The defendant has to prove some of the contention elicited in the written statement and the original sale deed executed in favour of Nallathambi, dated 17.10.1975, is now available with the R.D.O., Trichy. Hence, a fresh summon has to be issued to the R.D.O. to produce the original sale deed.

6. Brief substance of the petition in I.A.No.928 of 2017 is as follows:-

To substantiate the case of the defendant, the defendant took steps to issue summon to the R.D.O. for the production of the original sale deed and for the production of the passport of one Nallathambi. Passport alone was produced and it was reported at that time that the original sale deed 17.10.1975 was not available and if the same was traced out, it will be produced before the Court, on receipt of summons. Now the original sale deed 17.10.1975 is available with the R.D.O. and hence, a summon to the R.D.O., Trichy, to produce the documents has to be issued.

7. Brief substance of the counter filed by the respondent, in both the I.A. petitions, is as follows:-

It is wrong to state that the suit itself was filed only as a counter blast to the suit in O.S.No.93 of 2014. A vague statement of a witness admitting to produce the alleged original sale deed, dated 17.10.1975, if it is available will not create a cause of action to file the present petition. If at all an



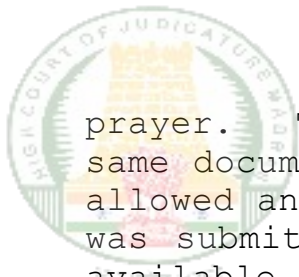
original sale deed was available, it would have been produced at that time itself. As the original sale deed is not available, it was not produced on that date. The petitions were filed only to drag on the proceedings. Already a petition in I.A.No.736 of 2016 was filed for the same relief and the petitions were closed and the present applications is liable to be dismissed. The case is posted for arguments. The trial of the suit cannot be reopened to fill up the lacuna in the case of the defendant. There is no merit or substance in the petitions.

8.The Trial Court passed a common order in both the I.A petitions. Both the petitions were dismissed by the Trial Court. Against the same, the revision petitioner has approached this Court by way of these Civil Revision Petitions.

9.On the side of the revision petitioner, it is stated that the Trial Court failed to approach the facts of the case in the proper perspective. The trial Court is wrong in deciding that the petitioner failed to prove that the original sale deed was traced out by the R.D.O. Office. On the earlier occasion, a staff from the R.D.O. Office, who attended the Court, has deposed that the document could be traced out and as soon as the same is traced out, it will be produced in the Court. The revision petitioner approached the R.D.O. Office and he came to understand that the document has been traced out. Only on summon from the Court, the same could be produced before the Court. In Interlocutory Applications, the affidavit can be used as evidence, no other proof is necessary. Getting instruction from the R.D.O. Office through R.T.I. Act will result in delay of disposal of the case. Opportunity should be given to the parties for production of documents, the Court shall not shut the doors of justice to the litigants and prayed the petitions for reopening the case and for summoning the documents to be allowed.

10.On the side of the revision petitioner, it is stated that Nallathambi and Mayilvahanam sold the property to Pitchairathinam, who sold the property to Shankar and Arumugam. From them, the revision petitioner claimed title. To prove that Periyasamy sold the southern portion of the property to Nallathambi, on 17.10.1975, the revision petitioner filed a petition to summon the R.D.O. Even at the appellate stage, sufficient opportunity should be given to the parties to prove the case. A judgment of the Hon'ble Supreme Court reported in **2019-3-CTC-799 [Uttaradi Mutt V. Raghavendra Swamy Mutt]** is cited. The Registered document in the custody of the Government has to be marked and that the R.D.O has to be summoned.

11.On the side of the respondent, it is stated that this is a revision petition filed by the revision petitioner for the same



prayer. The relief in the earlier petition is identical, the same document was the subject matter. The earlier application was allowed and a staff from the R.D.O. Office was examined. Passport was submitted and it was stated that there was no other document available in the RDO Office. Knowing fully well that the document is not available in the R.D.O. office, the revision petitioner has filed this petitions only to drag on the case. The case is posted for arguments, at this stage, there is no necessity to reopen the case. There was no evidence on the side of the petitioner to show that such document was available in the R.D.O. Office. There is no merit in the petition.

12. It is further stated that only to fill up the lacuna in the case, the petitioner wants to reopen the case and to send for documents. After the completion of evidence, application for production of document and for reopening the case should not be allowed. A judgment of the Hon'ble Supreme Court reported in **2013-3-L.W.-610 [M/s.Bagai Construction V. M/s. Gupta Building Material Store]** is cited, wherein it is stated as follows:-

"11.The perusal of the materials placed by the plaintiff which are intended to be marked as bills have already been mentioned by the plaintiff in its statement of account but the original bills have not been placed on record by the plaintiff till the date of filing of such application. It is further seen that during the entire trial, those documents have remained in exclusive possession of the plaintiff but for the reasons known to it, still the plaintiff has not placed these bills on record. In such circumstance, as rightly observed by the trial Court at this belated stage and that too after the conclusion of the evidence and final arguments and after reserving the matter for pronouncement of judgment, we are of the view that the plaintiff cannot be permitted to file such applications to fill the lacunae in its pleadings and evidence led by him. As rightly observed by the trial Court, there is no acceptable reason or cause which has been shown by the plaintiff as to why these documents were not placed on record by the plaintiff during the entire trial. Unfortunately, the High Court taking note of the words "at any stage" occurring in Order XVIII Rule 17 casually set aside the order of the trial Court, allowed those applications and permitted the plaintiff to place on record certain bills and also granted permission to recall PW-1 to prove those bills. Though power under Section 151 can be exercised if ends of justice so warrant and to prevent abuse of process of the court and Court can exercise its discretion to permit reopening of



evidence or recalling of witness for further examination/cross-examination after evidence led by the parties, in the light of the information as shown in the order of the trial Court, namely, those documents were very well available throughout the trial, we are of the view that even by exercise of Section 151 of CPC, the plaintiff cannot be permitted."

13.It is seen that the case was posted for arguments. The claim of the revision petitioner is that the sale deed, dated 17.10.1975 was traced out by the R.D.O. Office. But, the petitioner has not produced any document to show that the original sale deed, dated 17.10.1975 was available in the R.D.O. Office. In the earlier occasion, a similar petition was allowed and at that time, the statement of the staff of the R.D.O., is that the original sale deed was not available. The revision petitioner was not entitled to file a second petition for the same cause of action. When there is no proof that the documents are now available in the R.D.O. Office, the second prayer by the revision petitioner on the same cause of action is not maintainable. When the prayer for sending for the document is not maintainable and there is no necessity to summon the R.D.O.

14.In the above circumstances, it is decided that there is nothing sufficient enough to interfere in the orders of the trial Court. Hence, these Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS III)

// 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

1.The Principal District Munsif, Tiruchirappalli.



C.R.P.(MD)Nos.2625 and 2626 of 2017

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

+1 CC to M/s.R.SUNDAR SRINIVASAN, Advocate (SR-32997[F] dated
28/10/2021)

**C.R.P. (MD) Nos.2625 and 2626 of 2017
and**

**C.M.P. (MD) No.12088 of 2017
27.10.2021**

NA (CO)
SB (30.11.2021) 6P 5C