



CRP(MD)No.308 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 20.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP(MD)No.308 of 2022
and
CMP(MD)No.1367 of 2022

Anjay Jain

: Petitioner

Vs.

1.Kalieswari

2.Minor Karpagam

3.Minor Selvi

4.V.Muthumari

5.The Sub-Registrar,
Office of the Sub Registrar,
Sivakasi.

6.The Tahsildar,
Office of the Tahsildar,
Sivakasi,
Virudhunagar District.

: Respondents

[Minor respondents 2 & 3 are represented by their mother / natural guardian, the first respondent]



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PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records relating to the fair and decreetal order dated 12.11.2021 passed in I.A.No.1 of 2021 in O.S.No.178 of 2014, on the file of the District Munsif Court, Virudhunagar.

For Petitioner : Mr.M.Kannan

For Respondents : No appearance for R.1 to R.3

Mr.A.Sivaji for R.4

Mr.P.T.Thiraviam,

Government Advocate for R.5, R.6

ORDER

The petitioner, as plaintiff, has filed a suit in O.S.No.178 of 2014 for declaration and permanent injunction, as against the respondents / defendants, before the District Munsif Court, Virudhunagar. His evidence was recorded on 03.11.2017. For further evidence of the plaintiff, the case was adjourned. He has filed a memo to examine the Village Administrative Officer and the Record Clerk for marking certain revenue records. The trial Court, accepting the same, issued summons to the Village Administrative Officer and the other witness. They have not turned up. Subsequently, warrant was also issued as against the said witnesses.



In the meantime, the evidence of the plaintiff was closed on 28.02.2018 and at the instance of the fourth defendant, PW1 was recalled for the purpose of cross examination and he was also cross examined on 06.11.2019. The defendants side evidence was also closed. At this juncture, the petitioner / plaintiff has filed I.A.No.1 of 2021 in O.S.No.178 of 2014 to reopen the case for the purpose of examining the Village Administrative Officer and the other witness to mark certain revenue records. The learned District Munsif, Virudhunagar, by order dated 12.11.2021, dismissed the said interlocutory application stating that the petitioner has not taken sufficient steps to bring the witnesses at the time of examination. The trial Court has further held that the evidence of the plaintiff was closed as early as on 28.02.2018 itself and therefore, there is no reason to reopen the case. Aggrieved over the same, the petitioner has moved the instant revision petition.

2.Learned Counsel for the petitioner submitted that the plaintiff's side evidence was taken only on 03.11.2017 and immediately, the petitioner has filed an application to examine the two official witnesses. The trial Court has also accepted the same and issued summons. However, the official witnesses have not turned up and therefore, warrant was issued as against them and it was pending. The petitioner has also paid sufficient batta for the execution of the warrant.



Pending the warrant, without assigning any reason, the plaintiff side evidence was closed on 28.02.2018. Thereafter, the plaintiff was recalled at the instance of the defendants on 06.11.2019 for the purpose of cross examination. Now, the petition filed by the petitioner was dismissed that he has not taken any steps to examine the witnesses when the opportunity was given and therefore, the order impugned is liable to be set aside. He further submitted that the examination of the officials and the marking of the revenue records are very much required for the just adjudication of the case.

3.Learned Counsel for the fourth respondent submitted that the plaintiff side evidence was closed in the year 2018 itself and the petitioner / plaintiff has not taken any steps to examine the two official witnesses. Now, without assigning any reason, this application is filed in the year 2021 when the defendants' side evidence was closed. Therefore, the Court has rightly dismissed the application and prayed for dismissal.

4.Heard the learned Counsel appearing for the respective parties and perused the available records.



5.The petitioner / plaintiff has filed the suit for declaration and injunction.

He was examined as PW1 on 03.11.2017. He has filed an application to examine the Village Administrative Officer and the Record Clerk as additional witnesses for the purpose of marking certain revenue records. It was also permitted by the trial Court and summons were also issued. However, the witnesses have not turned up and therefore, on 23.01.2018, warrant was issued as against them. Within a month, the plaintiff side evidence was closed on 28.02.2018, without assigning any reasons. This Court is not able to understand as to why the evidence was closed on 28.02.2018, within a period of one month from the issuance of warrant.

6.The trial Court has observed that the petitioner / plaintiff has not taken sufficient steps to execute the warrant. When a warrant has been issued, it is the duty cast upon the Court to execute the same in the manner known to law. The fact remains that the petitioner / plaintiff has paid the batta for the execution of the warrant. Therefore, for not executing the warrant, the petitioner / plaintiff cannot be find fault with.

7.Since the trial Court has already issued summons and warrants to the official witnesses and has closed the plaintiff side evidence, pending the warrants,



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B.PUGALENDHI, J.

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without assigning valid reasons, this Court is inclined to interfere with the impugned order passed by the trial Court.

8.In the result, this civil revision petition stands allowed and the order dated 12.11.2021, passed by the learned District Munsif Court, Virudhunagar, in I.A.No. 1 of 2021 in O.S.No.178 of 2014, is set aside. The petition in I.A.No.1 of 2021 is allowed for the limited purpose of examining the Village Administrative Officer and the Record Clerk and for marking of the revenue records. Considering the fact that the suit is of the year 2014, the trial Court shall endeavor to expedite the proceedings and conclude the same, as expeditiously as possible. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No

20.09.2022

Internet : Yes

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To

The District Munsif,
Virudhunagar.

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