



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.01.2022

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P (MD)Nos.664 to 666 of 2017 &
CMP (MD)No.3001 of 2017

Muthusamy

... Petitioner in all petitions/
Petitioner/Plaintiff

Vs.

L.Ayyappan

... Respondent in all petitions/
Respondent/Defendant

COMMON PRAYER:- Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 02.03.2017 in IA.Nos.41, 42 and 43 of 2017 in OS.No.108 of 2009 on the file of the District Munsif cum Judicial Magistrate Court, Shencottai by allowing these Civil Revision Petitions.

In all petitions

For Petitioner : Mr.V.Meenakshisundaram

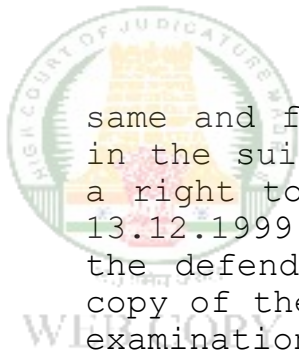
For Respondent : Mr.V.M.Balamohan Thampi

COMMON ORDER

The plaintiff is the revision petitioner before this Court challenging the dismissal of the following applications filed by him:-

(a) IA.No.41/2017 was filed by the plaintiff for re-opening the plaintiff's side evidence for receiving the certified copy of the sale deed and the Encumbrance Certificate, (b) IA.No.42/2017 was filed for re-calling the plaintiff and (c) IA.No.43/2017 was filed for receiving two documents namely the certified copy of the sale deed dated 13.12.1999 and the Encumbrance Certificate in respect of the suit property.

2. The plaintiff had filed the suit in OS.No.108/2009 for declaration in respect of the first and second item of the suit property and for an injunction restraining the defendants from interfering with the plaintiff's possession and enjoyment of the



same and for a mandatory injunction to remove the structure put up in the suit second item of the property. The plaintiff had claimed a right to the third item of the property under a sale deed dated 13.12.1999. First and second items are the portions encroached by the defendants. Along with the plaint, the plaintiff had filed a copy of the said sale deed and this copy was marked during the Chief examination of the plaintiff. It is the case of the plaintiff that the original document had been mortgaged with the District Collector's Office, Thirunelveli and therefore, the original could not be produced. Therefore, it was only xerox copy that was produced at the time of marking. When the matter was listed for arguments, the plaintiff while preparing for the arguments realised that only a xerox copy of the sale deed had been filed and not certified copy from the Sub Registrar Office. The same is only a oversight. Therefore, the plaintiff took out these 3 applications. The only defence to the above petitions was that they have been taken belatedly at the time of arguments with an intention to protract the proceedings.

3. The learned District Munsif cum Judicial Magistrate, Shencottai by order dated 02.03.2017 had dismissed the said petitions on the ground that the petitioner has not taken any steps earlier to substitute xerox with the certified copy. The learned Judge had also held that the suit had been dismissed for default on 02.06.2017 and thereafter, restored by orders in IA.No.261/2011. Thereafter, an application in IA.No.37/2012 was also filed for appointing Advocate Commissioner. In none of the petitions had the plaintiff sought to have the sale deed substituted. Therefore, for these reasons, the learned Judge had proceed to dismiss the applications. Challenging the orders, the plaintiff is before this Court.

4. Heard the learned counsels on both sides.

5. The document that is sought to be substituted is a sale deed dated 13.12.1999. A copy of the sale deed is filed along with the plaint and xerox copy is marked. The plaintiff only seeks to substitute xerox copy with the original copy. No new document is sought to be introduced and the Encumbrance Certificate is filed only to show the encumbrance of the property. The learned Judge ought to have allowed these applications and tried to dispose of the suit at the earliest. By dismissing the same, the suit has been unnecessarily protracted for a further period of four years. In these circumstances, the orders dated 02.03.2017 in IA.Nos.41, 42 and 43 of 2017 in OS.No.108 of 2009 on the file of the District Munsif cum Judicial Magistrate Court, Shencottai are set aside and the Civil Revision Petitions are allowed. No costs. Consequently, the connected miscellaneous petition is closed.

6. Considering the fact that the document is already on file <https://hcservices.ecourts.gov.in/hcservices/> a substitution that is to be made, the learned



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CMP(MD)No.3001 of 2017

District Munsif cum Judicial Magistrate, Shencottai is directed to dispose of the suit on or before 30.04.2022.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

The District Munsif cum Judicial Magistrate, Shencottai.

+1 CC to M/s.V.M.BALAMOHAN THAMBI, Advocate (SR-1572[F] dated 12/01/2022)

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-1085[F] dated 10/01/2022)

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RK/CK(03/02/2022) 3P 4C