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C.R.P.Nos.2882 and 2883 of 2023 &
C.M.P.Nos.17851 and 17859 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.10.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.Nos.2882 and 2883 of 2023 and
C.M.P.Nos.17851 and 17859 of 2023

V.Barani ... Petitioner in both the petitions

Vs.

Rangaraj ... Respondent in both the petitions

Civil Revision Petitions are filed under Article 227 of Constitution of India to set aside the order passed in I.A.Nos.12 and 11 of 2023 in O.S.No.37 of 2008 dated 18.07.2023 on the file of the learned Principal Sub Judge, Pondicherry respectively.

For Petitioner : Mr.Ganesan

COMMON ORDER

Since the issues involved in both the petitions are one and the same, they are taken up together and a common order is being passed.



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2. The present Civil Revision Petitions have been filed to set aside the order passed in I.A.Nos.12 and 11 of 2023 in O.S.No.37 of 2008 dated 18.07.2023 on the file of the learned Principal Sub Judge, Pondicherry respectively.

3. The petitioner is the plaintiff in O.S.No. 37 of 2008 and the plaint has been filed through power agent. The petitioner has sought for declaration of title and permanent injunction over the schedule mentioned property. The petitioner claims that the respondent / defendant had an illegal entry into the scheduled property. Further, the respondent / defendant had filed O. S. No.38 of 2008 for permanent injunction, other suit O. S. No. 27 of 2006 was filed by the petitioner for specific performance was tried together. Meanwhile, the petitioner had summoned one Balasaraswathi from whom he bought the property but the said person had not appeared. The respondent / defendant had produced the documents regarding the property, viz., registered sale deed, certified copy of No Objection Certificate, Original copy of Power of Attorney, Encumbrance certificate and original deed of confirmation. The petitioner / plaintiff at the fag end of the trial had sought to call three witnesses through I.A. No. 12 of 2023, who are the partners of the vendor of respondent / defendant, viz., Krishnamorthy, Managing Partner of M/s. Bharat Madha Chemicals who



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had bought the property from Balasaraswathi, and I.A.No.11 of 2023 had been filed under Order 16 Rule 1(3) to furnish the list of witness and to summon such witness. The said IAs were dismissed by the Principal Sub Judge, Pondicherry. As against the same, the present Revisions are filed.

4. The learned counsel for the petitioner would submit that earlier, the petitioner had filed an application in I.A.No.257 of 2022 to examine the vendor of her principal, namely, Balasaraswathi and the same was partly allowed, but the said Balasaraswathi did not turn up, thus the case was posted for further evidence. Further, one Krishnamorthy, Managing Partner of M/s. Bharat Madha Chemicals did not purchase the lands from Balasaraswathi and therefore, he has no authority to sell the property without the consent and knowledge of other partners. Thus, the petitioner needs to examine the three other Partners.

5. The learned counsel for the petitioner also contends that the said Krishnamorthy is no more and he had received an advance of Rs.5,71,000/- for selling the company property to the principal. The other partners are claiming as if they had received the said amount as loan and executed promissory note in favour of his principal. The petitioner / plaintiff submits that the respondent / defendant had unlawfully entered into the suit



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property on 12-5-2005 and erected borewell pumpset and conducted soil test. The plaintiff complained in Kirumampakkam Police Station and the police advised the petitioner to seek injunction.

6. The learned counsel for the petitioner also contends that the petitioner / plaintiff had purchased the land prior to the respondent / defendant through sale deed dated 31-5-2005. Therefore, the petitioner had filed the IA before the trial court to examine the partners of the M/s. Bharat Madha Chemicals, thereby pleaded to allow the present Revisions.

7. It is the case of the respondent before the court below that the petitioner had already moved the application with the same prayer in I.A.No.387 of 2022 seeking to examine three partners in the connected suit in O.S.No.38/2008 and the same was dismissed by the trial court, as the court below found that the petitioner had opted to delay and drag the suit and hence dismissed the said I.A., on 30.10.2022 and there is no valid reasons as to why the witnesses were not added in the previous application in I.A.No.257/2022.



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8. It is also the case of the respondent before the court below that this Court in CRP (MPD) No.167/2018 directed to restore the suit in the event of petitioner will cooperate the disposal of the suit and it is the petitioner, who delayed the proceedings by filing one after another application and there is no valid reasons as to why the witnesses were not added in the previous application in I.A.No.257 of 2022 and thereby pleaded to dismiss the I.As.,

9. Heard the learned counsel for the petitioner and perused the documents placed on record.

10. The Point now arise for consideration is that 'Whether the trial court was right in dismissing the application filed by the petitioner to examine additional witnesses at the fag end of trial'?

11. It is relevant to point out that in the case of K.K. Velusamy Vs. N. Palanisamy reported in (2011) 11 SCC 275 the Hon'ble Supreme Court had held as follows:

“ We may add a word of caution. The power under Section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bonafide and where the additional evidence,



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oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the Court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly, the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly, if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs”

12. In the present case on hand the petitioner/plaintiff had stated in his plaint itself that Krishnamorthy, Managing Partner of M/s. Bharat Madha Chemicals did not purchase the land in his individual capacity and therefore he has no authority to sell the property without the consent and knowledge of other partners. That being the case the petitioner ought to have impleaded the three partners in the list of witness during the trial and the petitioner had not stated any valid reason for not summoning the three partners at the earlier stage. Therefore, this Court is of the view that the court below has rightly passed an order rejecting I.A.Nos.11 and 12 of 2023, which is perfectly valid and does not require any interference, therefore, the present Revisions are liable to be dismissed.



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Accordingly, the present Revisions are dismissed. Consequently,
connected miscellaneous petitions are closed. No costs.

10.10.2023

Index : Yes/No
Internet : Yes/No
Speaking /Non-Speaking Order

ssd

To
The Principal Sub Judge,
Pondicherry.



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V.BHAVANI SUBBAROYAN, J.,

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