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C.R.P. (PD) .No.2852 of 2017



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.2852 of 2017
and C.M.P.No.13442 of 2017

1.Kasipillai (died)

2.K.Kanchana

3.K.Govardhana

4.K.Kesavan

.. Petitioners

(Petitioners 2 to 4 brought on record
as per order of this Court dated
06.11.2024 in C.M.P.No.6957 of
2024 in C.R.P.No.2852 of 2017)

Vs.

1.Durai

2.Mathialagan

.. Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order dated 04.07.2017 passed in I.A.No.121 of 2017 in O.S.No.221 of 2008 on the file of the Learned District Munsif, Arakkonam, Vellore District and allow this Civil Revision Petition.



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C.R.P. (PD) .No.2852 of 20



For Petitioner : Mr.R.Sathish Kumar
for Mr.M.R.Kuyilan

For R2 : Ms.A.Brindha
For Mr.P.Mohan Raj

ORDER

This civil revision petition is at the instance of the plaintiff in O.S.No.221 of 2008.

2.O.S.No.221 of 2008 is a suit for specific performance of an agreement of sale dated 28.06.1992. According to the plaintiff, he had paid a sum of Rs.6,000/- to one Natesa Achari, who had entered into an agreement of sale, on that day. Subsequently, the balance of consideration was paid to him and the plaintiff took possession of the property. Natesa Achari did not execute the sale deed and was evading the same. He passed away in the year 1998, leaving behind the defendants as his legal heirs. When the plaintiff called upon the defendants to execute the sale deed, they demanded additional sum of Rs.1,00,000/- to the amounts already paid by the plaintiff to Natesa Achari. Being left with no other option, he came forward with the present suit for specific performance and for consequential reliefs.



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3.The defendants filed a detailed written statement denying the claim made by the plaintiff. They pleaded that the allegation that the amounts were paid to Natesa Achari is false and they referred to a notice dated 02.10.2008 to substantiate their case. They further pleaded that the suit is hopelessly barred by limitation and that the entire suit was filed with an intention to grab the suit property.

4.Issues were framed and parties were pushed to trial. The suit was listed in the special list on 23.06.2014. The plaintiff did not appear and therefore, the suit was dismissed for default. Thereafter, it was restored and the plaintiff has given his evidence on 22.02.2016 and 21.03.2016. The evidence was closed *suo motu* on 21.03.2016. The petitioner filed an application to re-open and recall and that came to be allowed on 06.04.2016. Thereafter, he examined the attesting witness to the document as P.W.2. Yet again, evidence was closed on 06.10.2016 as the plaintiff did not put forth further evidence.

5.In order to re-open such closure, the plaintiff filed an application to re-open and to examine further witness. This application was numbered as I.A.No.121 of 2017. The learned Judge ordered notice to the defendants and



they also filed a counter.

6.They pleaded that the entire attempt of the plaintiff is to drag on the matter by filing one re-open application after another and hence, the petition is unsustainable. Taking into consideration the petition and counter, the learned Trial Judge agreed with the defendants and dismissed the application for re-opening the evidence of the petitioner. Hence, this revision.

7.I heard Mr.R.Sathish Kumar for Mr.M.R.Kuyilan and Ms.A.Brindha for Mr.P.Mohan Raj for the respective parties. They reiterated their contentions that were placed before the Court below.

8.I have carefully considered the records and I have gone through the impugned order.

9.The narration of the aforesaid facts would go to show that the plaintiff claims he has performed all that he had to under the agreement of sale dated 28.06.1992. He claims that he is in possession of the property. The plaintiff has tendered his evidence. It is at the stage of further evidence. In case, I.A.No.121 of 2017 had been allowed, the plaintiff would have examined one Mr.Radhakrishnan, an attesting witness to the document, one



Rajendiran, the scribe of the agreement of sale and two other neighboring owners in order to establish his case. The plaintiff has examined only one of the attesting witness as P.W.2. It is not in dispute that the evidence was closed *suo motu* on 06.10.2016. Had the learned Judge allowed the application by this time, the suit after contest, would be decreed. The delay caused on account of the dismissal of the re-open petition would have been avoided. Unfortunately, the case is still at the stage of trial.

8.The plaintiff has shown his willingness to cooperate to the Court for disposal of the proceedings by examining himself as well as an attesting witness. Examination of a party is normally done by an advocate and for the mistake of the advocate, the party need not suffer. It is true as argued by Mr.R.Sathish Kumar that the suit has been pending from the year 2008 and that the defendants are still facing the litigation over their property. If an appropriate direction is given for the disposal of the suit at an early date, it will cut the fears of Ms.Brindha's client. At the same time, the plaintiff must be put on terms for not having produced the witness at the stage when the matter was listed for further evidence. Therefore, I am inclined to allow the revision and set aside the order passed by the learned District Munsif, Arakkonam with the following directions:



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(a) I.A.No.121 of 2017 will stand allowed on the condition that the plaintiff pays the defendants a sum of Rs.5,000/- within four weeks from the date of receipt of a copy of this order.

(b) In case, the cost is not paid, the Civil Revision Petition will stand dismissed without further notice to this Court.

(c) If the cost is paid, the plaintiff will examine the four witnesses in quick session before the Court and complete his evidence on or before 31.01.2025. Thereafter, the defendants shall enter the witness box and complete the evidence on or before 31.03.2025.

(d) The learned Judge is requested to hear the arguments and pronounce the final judgment in the suit on or before 30.04.2025.

9.In the result, this Civil Revision Petition is allowed. Consequently, the connected Miscellaneous Petition is closed. No costs.

06.11.2024

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Index : Yes / No



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V.LAKSHMINARAYANAN, J.

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To

The Learned District Munsif, Arakkonam,
Vellore District.

C.R.P.(PD).No.2852 of 2017

06.11.2024