



C.R.P(MD)No.2951 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 22.11.2024

CORAM

THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN THILAKAVADI

C.R.P(MD)No.2951 of 2024
and
C.M.P(MD)No.16862 of 2024

Dhanalakshmi

... Petitioner /
Petitioner/
1st Defendant

Vs.

1.Suruliammal

2.Dhanalakshmi

3.Ponnambalam

4.Subramani

5.Gunasekaran

... Respondents 1 to 5/
Respondents 1 to 5/
Plaintiffs 1 to 5

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 06.09.2024 in I.A.No. 17 of 2024 in O.S.No.113 of 2011 on the file of the learned District Munsif Court, Andipatti.



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For Petitioner : Mr.B.Ponnu Pandi

For Respondents : Mr.M.Mohamed Ibram Saibu

ORDER

This Civil Revision Petition is preferred against the order in I.A.No.17 of 2024 in O.S.No.113 of 2011 on the file of the District Munsif Court, Aundipatti.

2.The revision petitioner is the first defendant in the said suit. The respondents/plaintiffs filed the above suit for redemption of mortgage and for various other reliefs.

3.The present application in I.A.No.17 of 2024 was preferred by the first defendant for reopening the defendants' side witness and for producing further evidence. The said application was dismissed by the trial Court on the ground that the petitioner's earlier applications for filing additional written statement was dismissed on 09.09.2020 and the same was confirmed by this Court in CRP(MD)No.1106 of 2020 vide order dated 01.03.2024. Two petitions in Interlocutory Application Nos.



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14 of 2023 and 15 of 2023 filed by the first defendant for reopening the suit and for recalling PW.1 to conduct further cross examination were also dismissed by the trial Court on 20.06.2024 and the same was also confirmed by this Court in CRP(MD)Nos.2059 and 2060 of 2020 vide order dated 30.08.2024.

4.In the order impugned in this civil revision petition, it was observed that the case was posted for further evidence of defendants' side on 26.08.2022, 16.09.2022, 14.10.2022 and 28.10.2022. In spite of that, the petitioner herein / first defendant failed to examine any witness on their side. The learned trial judge also observed that the suit was filed in 2011 itself and therefore prayers such as reopening and adducing further evidence in the year 2024 is not appropriate. Accordingly, the trial Court dismissed the said application against which the present revision is preferred.

5.The learned counsel for the revision petitioner would submit that the trial Court ought to have considered the fact that necessity to reopen the case for adducing further evidence to establish their defence.



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6.The case of the plaintiffs is that the suit properties were originally belonged to one Ponnuchami Chettiar. He executed a registered othi deed in respect of the suit properties in favour of one Perumal with an intention to safeguard his right in the suit properties and to shield the same from unexpected, unlawful claims of others. The said othi deed was a sham and nominal document and without consideration. The mortgagor Ponnuchami Chettiar had died on 05.12.1994 and his only son Pandian also died on 26.03.2005 leaving behind the plaintiffs as his legal representatives. The plaintiffs after coming to know that the said Perumal has sold the second item of the suit properties to the second defendant, who in turn sold the same to the first defendant and that therefore, the plaintiffs were constrained to file the above suit for redemption.

7.The defence set up by the first defendant is that the said Perumal had been in possession and enjoyment of the suit properties till he sold the same to the second defendant vide sale deed dated 28.02.1996. The second defendant thereafter sold the property to the first defendant vide sale deed dated 04.08.2005 and since then, the first defendant has been in



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possession and enjoyment of the suit property. One Pandian, S/o Ponnuchamy Chettiar had executed a registered general release deed dated 23.05.1978 in favour of his father Ponnuchamy Chettiar releasing his interest in all the immovable properties belonging to Ponnuchamy Chettiar including the suit properties. Since the said Pandian had already released his rights in the suit properties, the plaintiffs being his legal heirs are not entitled to claim any right in the suit property. Since Ponnuchamy Chettiar has become the absolute owner of the suit property, he has executed the usufructuary mortgage deed in favour of Perumal and therefore, the plaintiffs' suit is liable to be dismissed.

8.While the facts being so, the learned counsel for the revision petitioner would submit that Pandian Chettiar has filed O.S.No.207 of 2008 before the Sub Court, Theni for declaration and permanent injunction in which the present suit property has been mentioned as second item and that the said suit was dismissed after full trial. Challenging the same, the plaintiffs filed an appeal in AS No.10 of 2014 and the same is pending before the Additional District Court, Theni. Suppressing the above facts, the plaintiffs filed the present suit.



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9. Therefore, the learned counsel for the revision petitioner would submit that the present I.A.No.17 of 2024 is filed for letting further evidence has to be allowed. The trial Court dismissed the said application erroneously without proper appreciation of facts. Hence, the revision petitioner is constrained to file this revision petition.

10. On the other hand, the learned counsel appearing for the respondents would submit that earlier, two applications recalling PW.1 for further cross examination and for additional written statement filed by the revision petitioner were dismissed after full contest and that the same were also confirmed by this Court. Even in the said revisions, it has been clearly observed by this Court that the suit property in O.S.No. 207 of 2008 is the southern portion in Survey No.11/9 whereas the present suit is with respect to the northern portion of the said survey number. Therefore, there is no nexus between the two suits. The intention of the revision petitioner is to drag on the proceedings. The learned counsel for the plaintiffs/respondents would submit that the present suit is pending since 2011. Hence, he prayed for dismissal of the revision petition.



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11.I carefully considered the rival contentions and went through the materials on record.

12.On perusal of the records, it is seen that the petition for filing written statement on the side of the revision petitioner/first defendant was already dismissed by the trial court and the same was confirmed by this Court. In the order dated 01.03.2024 in CRP(MD)No.1106 of 2020, it was observed by a learned Judge of this Court that dismissal of O.S No.207 of 2008 is immaterial for the purpose of the present suit. It is further seen that the evidence on the side of the plaintiffs was already over as early as on 26.06.2019. No steps were taken by the revision petitioner thereafter. Moreover, the case was posted on 08.11.2023 for arguments of the defendants. At this juncture, the petitioner has come up with the present application in the year 2024. Even in the said application, it has not been mentioned that for what purpose, the documents/evidence has been sought to be adduced. Only in the affidavit filed in support of this civil revision petition, certain facts have been mentioned which has also been rejected vide earlier revision orders passed by this Court.



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13.I also find no merit in this civil revision petition. Accordingly this Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

22.11.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
MGA

To

The District Munsif Court,
Andipatti.



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K. GOVINDARAJAN THILAKAVADI, J.

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