(2017) 07 MAD CK 0050

In the Madras High Court

Case No : 1052 of 2012

M.Dhanasekaran	APPELLANT
Vs	
S.Krishnan & ors	RESPONDENT

Date of Decision : 04-07-2017

Acts Referred:

Code of Criminal Procedure, 1973, Section 482 - Saving of inherent powers of High Court

Citation : (2017) 07 MAD CK 0050

Hon'ble Judges : R.Subramanian

Bench : SINGLE BENCH

Advocate : R.Subramanian

Judgement

1. The unsuccessful plaintiff in O.S.No.13661/10 is the Appellant. The said suit was originally filed in this Court as C.S. No.1007/2007 and the same was later transferred to the trial Court namely the Additional District Judge, Fast Track Court - V, Chennai.

2. The suit was filed seeking a declaration and to set aside the sale deed dated 06.08.2007, alleged to have been executed by the plaintiff in favour of the first defendant and registered as Document No.2849/2007, on the file of the third respondent, Sub Registrar, Anna Nagar and for permanent injunction restraining defendants 1 and 2 from interfering with the peaceful possession of the plaintiff over the suit property.

3. According to the plaintiff, the suit property belongs to him, having been assigned to him by the Tamil Nadu Slum Clearance Board. The said title is not in dispute. The plaintiff had entered into an agreement of sale with the first defendant on 22.04.2006, agreeing to sell the suit property for a consideration of Rs.14,50,000/- and received advance of Rs.4,50,000/-. Under the said agreement, the first defendant has agreed to pay the balance sale consideration, within a period of three months from the date of sale. Though the plaintiff was ready and willing to perform his part of the contract, the first defendant was not

ready and willing to pay the balance amount. Hence, the plaintiff informed the first defendant to take back the advance amount. However, the first defendant did not turn up.

4. It is further averred in the plaint that on 30.08.2006 the defendants 1 and 2 came to the plaintiff''s house along with one Gopi, broker, who arranged the deal between the plaintiff and the first defendant, threatened the plaintiff and his sisters and obtained an undertaking affidavit in Rs.100/- Non Judicial stamp paper, in and by which the plaintiff had agreed to repay a sum of Rs.6,50,000/- on or before 09.09.2006 failing which, he would execute the sale deed on 11.09.2006 in favour of the first defendant. Though the first defendant had paid a sum of Rs.4,50,000/- as advance, the plaintiff agreed to return a sum of Rs.6,50,000/- under threat. It is also claimed that on 30.08.2006, the defendants 1 and 2 forcibly trespassed into the plaintiff''s house and threatened the plaintiff and his family members to sign an undertaking affidavit.

5. The plaintiff is said to have issued a legal notice to the first defendant on 08.09.2006 informing him that the agreement dated 22.04.2006 stands cancelled and requiring him not to indulge in any illegal activity of threatening the plaintiff. A reply was issued by the first defendant on 11.09.2006 claiming that the plaintiff had voluntarily signed the undertaking affidavit. Thereafter, the defendants 1 and 2 attempted to dispossess the plaintiff with the help of police and tried get a sale deed executed in favour of the first defendant. It is claimed that the plaintiff has lodged a complaint on 18.09.2006 with the Commissioner of Police and the same was forwarded to Assistant Commissioner of Police, Koyambedu for enquiry and before the Assistant Commissioner of Police the first defendant agreed to take back Rs.4,50,000/-from the plaintiff and undertook not to disturb the plaintiff. Due to the threats by the defendants 1 and 2, the plaintiff was forced to stay away at Thiruvottiyur in his uncle''s house and he lodged complaint with the police on 30.4.2007. Since, the police failed to take action, the plaintiff filed Crl.O.P.No.15911/2007 in this Court and a direction was issued by this Court. Thereafter, the plaintiff issued telegraphic notice to the Sub Registrar''s office. It is further claimed that the defendant 1 and 2 had forcefully taken the plaintiff to the Sub Registrar''s office at Anna Nagar, during December 2006 and had obtained the registered agreement of sale in favour of the second defendant.

6. It is further averred that the plaintiff, his wife, his mother-in-law and his son were kidnapped by the defendants 1 and 2 on 03.08.2007 at about 9.30p.m. from Thiruvottiyur and were taken to Vattavallam village at Villupuram District. After confining them for two days at Vattavallam village in the house of first defendant''s brother, on 06.08.2007 about 10.00 a.m, the defendants 1 and 2 brought the plaintiff and his family members to Chennai and threatened the plaintiff to execute the sale deed in favour of the first defendant. Thereafter, it is claimed that the plaintiff was taken to the Sub Registrar''s office at Anna Nagar and the sale deed was extracted from him. Thus, according to the plaintiff, the

defendant 1 and 2 grabbed the, plaintiff''s property fraudulently. It is also claimed that the first defendant had given three Pay Orders dated 06.08.2007 drawn on Karur Vysya Bank, Anna Nagar Branch, bearing no.915170, 915171 and 915172 for a sum of Rs.5,00,000/-, Rs.2,00,000/- and Rs.3,00,000/- respectively to the plaintiff. The plaintiff would contend that he had not willingly and voluntarily received the pay order''s. The defendants 1 and 2 had along with rowdy elements forcefully handed over the Pay Orders and illegally enforced the sale agreement dated 15.12.2006 and got the sale deed in favour of the first defendant. The plaintiff was not in a position to resist both the defendants 1 and 2 and the rowdy elements and in order to save his life he has signed the sale deed and put his thumb impression. Therefore, according to the plaintiff, the execution of sale deed dated 06.08.2007 was not voluntary and it was obtained by coercion and undue influence by the defendants 1 and 2.

7. It is also claimed that after obtaining such sale deed, the defendants 1 and 2 forced the plaintiff to sign the affidavit of undertaking on 06.08.2007 stating that he will not take any legal action against them and he will vacate the suit property and hand over the vacant possession of the same within a period of 3 months. The said undertaking affidavit was obtained by the defendant''s from the plaintiff by force, fraud and coercion. The plaintiff has not voluntarily executed the said affidavit and it would not bind the plaintiff. The plaintiff has also given a complaint before the Chief Minister cell on 01.05.2007 against the defendants 1 and 2 with regard to the kidnapping. The plaintiff has also given a complaint on 16.08.2007 to the Commissioner of Police, Egmore, Chennai, since the concerned Police Inspector was colluding with the defendants. Thereafter, another complaint was given on 07.09.2007 before the Deputy Commissioner of Police, Anna Nagar. Since no action was taken by the police, the plaintiff filed Crl.O.P.No.15911/2007 before this Court under section 482 Cr.P.C. for registering a case against the defendants based on the complaint dated 16.08.2007. Therefore, according to the plaintiff, the sale deed dated 06.08.2007 was obtained by coercion and undue influence and the same is liable to be set aside. It is also contended that the defendants 1 and 2 with the help of the police had obtained the possession of the first floor portion of the suit property.

8. The said suit was resisted by the defendants 1 and 2 contending that the claim by the plaintiff that the sale deed dated 06.08.2007 was obtained by undue influence and coercion is not true. According to the defendants, the plaintiff had agreed to sell the property to the first defendant on 22.04.2006 for a consideration of Rs.14,50,000/- and received an advance of Rs.4,50,000/. Though the first defendant was ready to pay the balance sale consideration and get the sale deed executed, the plaintiff had not come forward to honur his commitment in the agreement. Therefore, the first defendant had lodged a police complaint with the Inspector of police, V-5 Thirumangalam police station. During the enquiry, the plaintiff agreed to repay the advance amount along with the additional sum of Rs.2,00,000/- towards the costs and expenses incurred by them and to that effect the plaintiff had executed an undertaking on 30.08.2006.

As per the said undertaking, the plaintiff has to pay a sum of Rs.6,50,000/- on or before 11.09.2006, failing which he would execute a sale deed after receipt of the balance of Rs.10,00,000/-. However, the plaintiff went back on his promise and sent a legal notice on 08.09.2006 claiming that the agreement dated 22.04.2006 stands cancelled and he has also stated that the first defendant had taken back the advance amount. The said notice was suitably replied to, by the first defendant on 11.09.2006. After the receipt of the reply notice, the plaintiff came forward and executed an agreement in and by which he had agreed that he could not execute the sale deed due to family circumstances and dispute between himself and his sisters. Therefore, he had decided to drop the proposal for sale of the property and he has affirmed that on 30.08.2006 he had agreed to repay a sum of Rs.6,50,000/- on or before 11.09.2006. On the said date, since he failed to repay a sum of Rs.6,50,000/- as agreed, he had handed over the possession of the first floor portion to the first defendant and he has also said that he will pay a sum of Rs.6,00,0000/- within a period of 30 days from the date of the said agreement i.e., 13.11.2006, failing which, he would execute the sale deed upon the receipt of Rs.8,50,000/-.

9. While so, the plaintiff had entered into registered agreement of sale on 15.12.2006 with the second defendant, who happened to be the son-in-law of the first defendant for sale of the same property for Rs.16,50,000/-. The said agreement is dated 15.12.2006 in and by which, the plaintiff had received a sum of Rs.1,50,000/- as advance and had agreed to execute sale deed after receipt of balance of Rs.15,00,000/-. The agreement was registered and on the very next day 16.02.2006, the second defendant had executed the undertaking, wherein, he has said that he has paid a sum of Rs.4,50,000/- due towards the sale consideration of Rs.16,50,000/- fixed in the agreement dated 15.12.2006 and he would pay the balance of Rs.12,00,000/- and take the sale deed. This was followed by another unregistered agreement of sale dated 17.12.2006 between the plaintiff and the second defendant wherein, the plaintiff agreed to sell the property to the second defendant for a sum of Rs.16,50,000/- and he has received an advance of Rs.3,00,000/- from the second defendant. The said agreement also discloses that the plaintiff would execute the sale deed on receipt of the balance as Rs.13,50,000/- within a period of 3 months from the date of the said agreement. According to the defendant''s, on the same date i.e.17.12.2006 the plaintiff had executed the undertaking, wherein, he has stated that he would vacate the property on 15.02.2007 and hand over possession. It is also claimed that the plaintiff had borrowed a sum of Rs.50,000/- from the second defendant on 17.12.2006 and executed a document styled as. Therefore, according to the defendant''s, the plaintiff though had agreed to sell the property for a consideration of Rs.14,50,000/- wants to wriggle out and contrary to the terms of agreement claimed more money and the first defendant having borrowed a sum of Rs.4,50,000/- even on 22.04.2006 had no other option but to submit to the demand of the plaintiff and therefore the second agreement dated 15.12.2006 came to be executed, wherein the consideration was shown as

16,50,000/-. It is further claimed that, on the execution of the sale deed dated 06.08.2007 the plaintiff had paid a sum of Rs.1,40,000/- to the first defendant and parties have agreed to retain the said amount of Rs.1,40,000/- as security for a period of 3 months. The said undertaking also reads that the said Rs.1,40,000/- will be paid by the first defendant to the plaintiff when the plaintiff vacates the house. The defendant would also contend that the very fact that the plaintiff had encashed the demand drafts to the tune of Rs.10,00,000/- would show that the sale deed obtained by undue influence and coercion is an after thought. After the sale, the plaintiff issued a notice on 08.09.2007 claiming that the sale deed was not executed by him voluntarily and the same was replied to suitably, vide reply dated 17.09.2007. Thereafter, the plaintiff has come forward with the present suit. Claiming that the suit itself is not maintainable and that the sale deed was executed by the plaintiff voluntarily after receiving the entire sale consideration, the defendants sought for dismissal of the suit.

10. The learned District Judge, who tried the suit, had framed the following issues: 1. Whether the defendants 1 and 2, as alleged by the plaintiff, kidnapped the plaintiff and his family members on 03.08.2007 and detained them and thereafter on 06.08.2007 compelled the plaintiff to execute the sale deed dated 06.08.2007 by practicing fraud, force and coercive or whether the plaintiff voluntarily executed the said sale deed, at his own will and volition?

2. Whether the plaintiff is in occupation of any part or whole of the suit property? If so, under what capacity?

3. Whether he is entitled to a permanent injunction so as to restrain the defendants 1 and 2 from interfering with the peaceful possession of the plaintiff in the suit property?

4. Whether the plaintiff is entitled for a declaration to get set aside the sale deed dated 06.08.2007 as prayed for?

5. To what reliefs parties are entitled to ?

11. On the side of the plaintiff, PW1 to PW4 were examined and Ex.A1 to A20 were marked. On the side of the defendants, DW1 and DW2 were examined and Ex.B1 to B29 were marked.

12. Upon consideration of the entire evidence on record, the learned trial judge came to the conclusion that the plaintiff has not come to the Court with clean hands. The fact that the Demand Drafts amounting to Rs.10,00,000/- were encashed by the plaintiff after the registration of the sale deed was held against him. The learned trial Judge also found that the theory of the plaintiff that he and his family members were kidnapped and forced to execute the sale deed, cannot hold water. On the above said findings the learned trial judge dismissed the suit, holding that the sale deed dated 06.08.2007 is valid. Aggrieved by same, the plaintiff has filed this appeal.

13. Heard Mr.J.Nandagopal, learned counsel for the appellant and

Mr.G.Thangavel, learned counsel for the respondents 1 and 2.

14. Mr.J.Nandagopal, learned counsel for the appellant, would contend that the chain of events and the nature of documents that had been obtained by the defendants from plaintiff would show that all was not well with the transactions. He would draw my attention to the contradictory recitals in each of the documents regarding, the consideration that is to be paid and would contend that the defendants 1 and 2 were in a position to dominate the will of the plaintiff and force the sale of the suit property by the plaintiff and therefore, it should be concluded that the sale deed dated 06.08.2007 was brought about by undue influence. Learned counsel also drew my attention to the oral evidence of the first defendant who was examined as DW1. In his evidence, DW1 had admitted that the possession of the first floor was obtained with the help of the police. According to the learned counsel for the appellant, this action of the first defendant would show that he would go to any extent to achieve his object. The learned counsel would further contend that the contradictions in the recitals in the sale deed and the deed of undertaking said to have been executed on the same day, with reference to the consideration would also go against the stand of the first defendant that the plaintiff had voluntary executed the sale deed in question.

15. Per contra Mr.G. Thangavelu, learned counsel for the respondents 1 and 2 would contend that it is the plaintiff who is guilty of attempting to cheat the defendants. When the plaintiff has not performed by part of contract under first agreement dated 22.04.2006, he offered to refund the advance along with an additional sum of Rs.2,00,000/- towards damages on or before 11.09.2006 and he had also specifically agreed that in the event of failure to repay the said sum, he would execute the sale deed after receiving a sum of Rs.10,00,000/-. Further, the learned counsel pointed out that on 13.11.2006 the plaintiff had executed another undertaking affidavit wherein, he had accepted the fact that he had handed over the possession of the first floor to the first defendant and stated if he is unable to repay the sum of Rs.6,50,000/- within 30 days from 13.11.2006, he would execute the sale deed on receipt of balance of Rs.8,50,000/-. The learned counsel for the respondents would also submit that the agreement dated 15.12.2006 is a registered agreement. On the very next day, the plaintiff has chosen to obtain an Ex.B6 indemnity bond from the second defendant to the effect that he would pay the balance sale consideration of Rs.12,00,000/-, less the charges payable to the slum clearance board, metro water charges and property tax at the time of registration of the deed showing the advance as Rs.4,50,000/-.

16. Learned counsel would draw my attention to another agreement dated 17.12.2006 between the plaintiff and the second defendant, wherein, the plaintiff has agreed for the sale of the very suit property at Rs.16,50,000/- and had stated that he had received an advance of Rs.3,00,000/-. These documents, according to the counsel for the defendants 1 and 2 would show that the sale

deed dated 06.08.2007 could not have been obtained by coercion or undue influence. There is nothing to show that the defendants 1 and 2 were in a position to dominate the will of the plaintiff. The learned counsel vehemently contended that having encashed demand draft for Rs.10,00,000/-, which was handed over at the time of execution of sale deed, the plaintiff is not entitled to claim that the sale deed was brought about by coercion and undue influence.

17. On the above arguments, the following points arise for determination in the appeal. 1. Whether the theory of coercion/ undue influence propounded by the plaintiff has been established by him?

2. Whether the plaintiff is entitled to the relief of setting aside the sale deed dated 06.08.2007 as prayed for?

3. Whether the plaintiff is entitled to permanent injunction restraining the defendants from interfering with has possession?

Point 1 and 2:

1. At the outset it should be pointed out that both the parties have entered into atleast three agreements of sale. The first one is dated 22.04.2006, entered between the plaintiff and first defendant. The said agreement is admitted and the total consideration was fixed in the said agreement as Rs.14,50,000/- and the advance amount shown to have been paid is Rs.4,50,000/-. The next agreement is dated 15.12.2006, which is a registered agreement between the plaintiff and the second defendant. The sale consideration was shown as Rs.16,50,000/- and the second defendant paid Rs.1,50,000/- as advance. On 17.12.2006, there is an indemnity bond said to have been executed by the plaintiff in favour of the second defendant, wherein the plaintiff has agreed to vacate and hand over the vacant possession of the property to the second defendant on 15.02.2007. There is also yet another document styled as executed between the plaintiff and the second defendant which would show that the plaintiff has borrowed a sum of Rs.50,000/- from the second defendant by mortgaging the suit property. The said indemnity bond was attested by the sisters of the plaintiff. On 30.06.2007, the second defendant issued a legal notice demanding the execution of the sale deed. The said legal notice states that the sum of Rs.1,50,000/- has been paid as advance amount and additional sum of Rs.3,00,000/- and Rs.50,000/- were received on 16.12.2006 and 17.12.2006 respectively. Thereafter sale deed dated 06.08.2007 executed between the first defendant and plaintiff, second defendant. At every stage, there has been shift in the stand of the both parties. The advance amount paid under each agreement is different and none of the later agreements refer to the earlier agreement. The recital in the sale deed dated 06.08.2007 show that a sum of Rs.1,50,000/- was paid as advance on 15.12.2006, a sum of Rs.3,60,000/- was paid on various dates, a further sum of Rs.10,00,000/- was paid by way of demand drafts referred to supra and the balance of Rs.1,40,000/- was paid in the presence of the Sub Registrar on the date of execution of the sale deed. However, on the very same day, an

undertaking is said to have been executed between the plaintiff and the first defendant, wherein, it is stated that the first defendant has retained Rs.1,40,000/- as security deposit and allowed the plaintiff to continue in the possession of the ground floor portion of the property for a period of three months. The recitals in the said undertaking affidavit are contrary to the sale deed. In the oral evidence, there is no explanation on the part of the plaintiff for having encashed the draft. Even though in the plaint, the plaintiff would state that he is ready to repay the sum of Rs.10,00,000/-, I do not think that would be a sufficient reason to hold that the sale deed was brought about by coercion or undue influence.

18. As already stated, the sale deed was executed as 06.08.2007, and on the same day, the plaintiff has executed an undertaking agreement to vacate the property within a period of three months. The plaintiff also encashed the demand drafts, which were handed over at the time of execution of sale deed. The plaintiff had chosen to send legal notice on 08.09.2007 accusing the first defendant of undue influence and coercion. The said notice is replied on 17.09.2007 and it is thereafter the plaintiff approaches the Commissioner of police on 17.10.2007 complaining that the sale deed has been obtained from him by undue influence. This conduct of the plaintiff is far from satisfactory. On a over all analysis of the evidence, the trial Court had found that though there had been certain disputes between the parties, the same were settled on the date of sale deed executed by the plaintiff and second defendant in favour of the first defendant. The payments made were tallied and the balance of sale consideration has been paid as recited in the sale deed and had accepted that Rs.1,40,000/- which had been retained by the first defendant as security for the occupation of the plaintiff in the ground floor portion of the property for a period of three months. Considering the totality of the circumstances, the trial Court has come to the conclusion that the plaintiff has not come to the Court with clean hands and he has not established the fact that the sale deed dated 06.08.2007 was executed under undue influence and coercion. DW2 is the attesting witness for execution of the sale deed dated 06.08.2007. He has deposed in very clear terms as to the execution of the sale deed and the manner in which the sale deed was registered. The evidence of the said witness DW2 has not been shattered in any manner in the crossexamination.

19. Even the evidence of the plaintiff as PW1 is far from satisfactory. He admits having executed all the documents. He has not denied the signature in any one of the documents. It is also not his pleading that the signature was obtained in a blank paper by the defendants 1 and 2 specifically. The plaintiff, who had executed several documents containing several discrepancies, cannot now take advantage of the discrepancies and claim that the sale deed was brought by coercion or undue influence. The very fact that the plaintiff had encashed all the three demand drafts for total sum of Rs.10,00,000/- would militate against the claim of the plaintiff to a large extent.

20. In support of the case of appellant, Mr.J.Nandagopal, learned counsel would rely upon the judgment of the Hon''ble Supreme Court in Ladli Parshad Jaiswal, v. The Karnal Distillery Co., Ltd. Karnal and others, reported in AIR 1963 Supreme Court 1279. Learned counsel would draw my attention to para 26 of the said judgment, wherein, the Supreme Court has made analysis of the meaning of the term "undue influence" and held that two conditions should be proved to show that there was undue influence. (i) The other party to a transaction was in a position to dominate his will.

(ii) That the other party had obtained an unfair advantage by using that position.

21. In my considered opinion, on the evidence available on record in this case, I do not find that both the conditions stand satisfied. It is not the case of the plaintiff that the defendants 1 and 2 were in a position to dominate the will of the plaintiff. On the other hand, I find that the plaintiff had voluntarily signed all the documents without any reservation and now trying to take advantage of his own mistake. As regards the second requirement that the other party had obtained an unfair advantage also, I do not think that the plaintiff has made out the case to succeed. The original sale consideration was fixed on 22.04.2006 at 14,50,000/- and the plaintiff has not averred anywhere that the said consideration was less and the property would fetch more. The sale consideration under the sale deed dated 06.08.2007 is Rs.16,50,000/-. Therefore I do not think that the first defendant could be said to have obtained an unfair advantage by the transaction.

22. The learned counsel for the appellant would also rely upon the judgment of this Court in Chendur Forgings (P) Ltd., Vs. Bhandari Interstate Carrier, reported in 2008 (4) CTC 75, wherein, this Court, considering the aspects of undue influence and on the question of burden of proof, has held that burden of proof is on the person who has alleged undue influence. Therefore, in the case on hand, it is the burden on the part of the plaintiff to prove the undue influence and I do not think that he has succeeded in the said attempt.

23. The learned counsel would also invite my attention to the judgment of the Hon''ble Supreme Court in Sethani Vs. Bhana reported in 1993 Supp (4) Supreme Court Cases 639. I do not think that the said case can be pressed into service to the case on hand, as in the said Judgment, admittedly, the document was executed by an illiterate tribal women who had no knowledge in respect of recitals therein. In the case on hand, the plaintiff cannot said to be an illiterate person. Therefore, on the point no.1, I conclude that the plaintiff has not established his claim that the documents were brought about by undue influence or coercion.

24. It should also be pointed out that the conduct of the defendants 1 and 2 in obtaining various documents particularly the documents styled as "VERNACULAR MATTER OMITTED" (indemnity bonds) which have been obtained on 30.08.2006, 13.09.2006 and 16.12.2006 and 17.12.2006 is far from satisfactory. These would show that the relationship between the parties was not cordial and there was

mutual distrust among the parties. But the fact that such documents are obtained can at best lead to the inference that the first and second defendants have also over reacted to the situation and had attempted to insulate themselves from any claim from the plaintiff''s side. Such a conduct, would not result in the plaintiff succeeding in his claim namely having the sale deed set aside on the ground of undue influence. The discrepancies between the registered instrument and the unregistered "VERNACULAR MATTER OMITTED" cannot be used by the plaintiff to prove his case of undue influence/coercion. At best these discrepancies would only show that the parties were at logger heads when the documents came to be executed. The plaintiff who had executed the documents with his eyes wide open, cannot take advantage of the same and shift the burden on the defendants. The plaintiff has sought for a decree for permanent injunction restraining the defendants from interfering with the possession of the plaintiff''s. Admittedly, the first defendant has already been put in possession of the first floor portion of the property. So far as the ground floor portion is concerned it is admitted by the defendants that the plaintiff is in possession of the same. It is also seen from the records that a suit has been filed by the first defendant seeking recovery of possession of the ground floor portion. Therefore plaintiff cannot claim permanent injunction restraining the defendants from interfering with his possession of the property. Point 2 is also answered against the plaintiff.

25. In view of the above conclusions recorded, the appeal fails and is accordingly, dismissed. However in view of the fact that the defendants have also not come with clean hands and they are also found to be guilty of suppressing material facts and getting the documents executed by the plaintiff indiscriminately, I do not find that they should be awarded costs either before the trial court or before this Court. Therefore taking into account the conduct of the defendants 1 and 2, I am constrained to reverse the decree in respect of cost and I hold that the defendants are not entitled to costs either in the suit or in this appeal. Therefore the decree of the Trial court will stand modified to the effect that the suit will stand dismissed without costs. Consequently, connected miscellaneous petition are closed.

