

(2012) 07 MAD CK 0117

In the Madras High Court

Case No : C.R.P. P.D. No's. 696 and 697 of 2012

T. Amuthan Anthony and A. Kala

APPELLANT

Vs

The Purusawalkam Permanent Fund Ltd., Chennai and
Balajee and Co., Chennai

RESPONDENT

Date of Decision : 25-07-2012

Acts Referred:

Citation : (2012) 5 LW 647

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : A.R. Sakthivel, for the Appellant;

Final Decision : Dismissed

Judgement

V. Dhanapalan, J.—Both the Civil Revision Petitions have been filed challenging the common order dated 17.11.2011 made in I.A.Nos. 14602 and 14603 of 2011 in O.S. No. 3542 of 2007 on the file of the learned V Assistant Judge, City Civil Court, Chennai. The revision petitioners are the plaintiffs in the suit in O.S. No. 3542 of 2007 and the suit has been filed for redemption of mortgage of the suit property and for return of the original documents. The respondents filed their written statement and contested the matter. At the stage when the trial had commenced and evidences were concluded and the matter was posted for arguments, the petitioners filed two application, one seeking to reopen the evidence of the plaintiffs and the other seeking to recall P.W.1. on the grounds that the mode of calculation made by the respondents is absolutely wrong; that the petitioner had intended to file a statement of accounts, to be marked as an exhibit; but, unfortunately, the said statement of accounts was not filed and marked; and furthermore, certain aspects with regard to the statement of accounts were left unelicited, inadvertently. Resisting the same, the respondents filed their counter stating that though the matter had been adjourned for arguments, the plaintiffs took number of adjournments without arguing the matter and came forward to file the above applications after completion of

evidence on both sides; that the petitioners should have filed a statement of accounts along with the plaint and that they intend to file the statement of accounts after the respondents filed a statement of accounts marked as Ex.P.3; that the petitioners have not filed any application for filing additional documents. On these grounds, the respondents sought for dismissal of the applications.

2. The trial Court, having considered of the entire case, found that the suit is filed by the petitioners/plaintiffs for redemption of mortgage and for re-conveyance of the property to the plaintiffs by the first defendants by receiving a sum of Rs. 1,25,000/-; that the suit was defended by the 1st defendant and the trial was conducted; that when the suit was posted for arguments on 4.7.11, 7.7.11, 15.7.11, 20.7.11, 27.11.11 and on 5.8.11, the case was adjourned at the instance of the plaintiffs and thereafter was adjourned to 23.8.11 and then on 29.8.11 for arguments; but the plaintiffs did not put forth their arguments, instead came up with these two applications seeking to reopen the evidence of the plaintiffs and to recall P.W.1. in order to mark a statement of accounts as an exhibit and to elicit certain aspects with respect to the statement of accounts. In the backdrop of the opposition of the defendants stating that without filing an application for reception of additional documents, the petitions filed by the petitioners are not maintainable, the trial Court arrived at the ultimate conclusion to dismiss the applications holding that if the petitioners/plaintiffs have really intended to mark the statement of accounts as an additional exhibit, they could have taken steps at the earliest opportunity available to them, which they failed to do and coming forward with those applications seeking to reopen the evidence of the plaintiffs and to recall P.W.1, would only show the attitude of the petitioners to drag on the proceedings. Aggrieved, the petitioners have come forward with the above revisions.

3. On a perusal of the claim of the petitioners and the conclusion arrived at by the trial court, I find that when petitions were filed for reopening the evidence and to recall P.W.1, particularly when such document was marked as Ex.P.3 and the trial was concluded and it was posted for arguments, it is not open to the petitioners to seek for reopening the evidence and to recall P.W.1, in the absence of any document in support of their claim. A perusal of the order would clearly show that the petitioners have taken number of adjournments for arguing the matter. If at all the petitioners had an intention to mark the statement of accounts as an additional exhibit, they could have filed it at the earliest opportunity available to them. Further, the petitioners have also not chosen to file any application for the reception of documents, viz., statement of accounts. Therefore, I have no hesitation to hold that only to drag on the proceedings, the petitioners have come forward with such applications seeking to reopen the evidence and to recall P.W.1, which, in my considered opinion, had been rightly dismissed by the trial court. The interference sought to be made into the well considered and merited order passed by the trial court is neither warranted nor called for. Accordingly, both the Civil Revision Petitions stand dismissed.

4. At this stage, the learned counsel appearing for the petitioners consistently pleaded before this Court that the petitioners may be permitted to put forth every contention in his written arguments. It is needless to say that the petitioners are at liberty to make every contention in their written arguments. Subject to the above observation, the Civil Revision Petitions are dismissed. No costs. M.P. No. 1 of 2006 is closed.