

G. Madhavan Vs. Kotteswaran and Others

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Court : Chennai

Decided On : Nov-03-1999

Reported in : 2000(1)CTC142; (2000)1MLJ685

Judge : K. Sampath, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) -- Sections 115 -- Order 18, Rule 18

Appeal No. : C.R.P.No. 1200 of 1999 and C.R.P.No. 6692 of 1999

Appellant : G. Madhavan

Respondent : Kotteswaran and Others

Advocate for Def. : Mr. N.R. Anantharamakrishnan, Adv.

Advocate for Pet/Ap. : Mr. J.R.K. Bhavananatham, Adv.

Judgement :

ORDER

1. The civil revision petition has been filed against the order of the learned Subordinate Judge, Thiruvallur, dismissing the application filed by the revision petitioner in I.A.No.10 of 1999 in O.S.No.63 of 1991 on his file. The application purports to be under Order 18 Rule 18 of the Code of Civil Procedure.

2. The affidavit filed in support of the application inter alia states as follows:

The petitioner/plaintiff has filed the suit for specific performance against the first respondent/first defendant. The second and the third respondents have been impleaded on the ground that they attempted to purchase the suit schedule item. The agreement of sale Ex.B-3 dated 26.11.1990 entered into between the second respondent and the first respondent is an antedated one and came into existence after the agreement for sale between the petitioner and the first respondent on 12.1.1991 under Ex.A-1. While the second respondent was being cross-examined, it was suggested to him that in the month of March, 1991 he applied for loan in a sum of Rs.10,000 to purchase S.No.787/1 of an extent of 4.70 acres and the third respondent applied for loan of Rs.10,000 to purchase S.No.787/2 of an extent of 94 cents, in all 5 acres and 64 cents. The applications for loan were made to Kadambathur Agricultural Development Bank. The suggestion was denied by the second respondent. According to the revision petitioner, after the issuance of legal notice dated 30.3.1999 and having the knowledge of agreement of the revision petitioner the second respondent fabricated the agreement of sale dated 26.11.1990 antedating the same with regard to the entire extent of the properties. On enquiry the revision petitioner came to know that the loan applications were given by the second and the third respondents on 18.3.1991 to Kadambathur Agricultural Development Bank. The production of the two loan applications made on 18.3.1991 and connected papers and inspection of the same would enable the court to effectually and completely adjudicate and settle all the questions involved in the suit.

3. The prayer in the application is to the following effect:

'For the reasons stated in the accompanying affidavit this Hon'ble Court may be pleased to accord permission to the petitioner/plaintiff to take subpoena and to cause production of loan application submitted by the second defendant Venkatarama Chettiar in respect of S.No.787/1 of an extent of 4.70 acres and loan application submitted by the third respondent Janakirama Chettiar in respect of S.No.787/2 of an extent of 94 cents and both the loan applications dated 18.3.1991 and connected records from Agricultural Land Development Bank, Kadambathur, through its Secretary for the purpose of inspection by this Hon'ble Court and justice may be rendered.'

4. In the counter it is stated as follows:

Ex.B-3 is not antedated. The details are given in the written statement which may be read as part of the counter. In the plaint the petitioner had not given any details about the alleged documents mentioned in the present affidavit. Even at the time of his examination the revision petitioner has not given any details about the alleged documents mentioned in the present affidavit. It is therefore no longer open to the petitioner to contend that the alleged documents mentioned in the affidavit are necessary to decide the dispute in the case. It is not true to say that the agreement in favour of respondents 2 and 3 was fabricated after the receipt of the notice dated 30.3.1991. There is no pleading about the alleged documents in the plaint and without such a pleading it is not open to the revision petitioner to contend that to prove the suggestion put to D.W.2 the present documents are necessary. The present documents are not a fact in issue or facts relevant to facts in issue. The provision of law stated is also not correct. As per Order 18 Rule 18 the Court is having the power to inspect any property or things concerning which any question may arise in dispute. The petition has to be dismissed.

5. The learned Subordinate Judge by his order dated 25-2- 1999 dismissed the application holding that the petition has been filed belatedly, that even at the time the plaintiff/petitioner filed the suit he ought to have mentioned about the second respondent applying to the Co-operative Bank for loan that at least at the time the petitioner was examined as a witness he should have mentioned about the loan transaction and that what had not been stated either in the pleadings or in the evidence cannot be introduced after the witnesses on the side of the defendants had been examined. The learned Subordinate Judge also found that the applications did not satisfy the requirements of Order 18, Rule 18 of the Code of Civil Procedure and that the documents are not relevant for the purpose of the suit. So holding the learned Subordinate Judge dismissed the application.

6. Mr.J.R.K. Bhavanantham, learned Counsel for the revision petitioner, submitted that the delay if any was not caused by the conduct of the revision petitioner, that the first defendant remained ex parte, that after examination of the second defendant as D.W.1 and the scribe of the agreement as D.W.2 an application was

filed by the first defendant to set aside the ex parte order, that the trial was protracted till the disposal of the application, and that after evidence was closed the second respondent had filed an application for filing an additional written statement and the same was dismissed. However, in C.R.P.No.1560 of 1998 the dismissal was set aside and the revision was allowed on terms that the petitioner was not responsible for any delay, that the petitioner made the application immediately after he came to know that respondents 2 and 3 had made applications to the bank for grant of loan, that the petitioner took all steps to cause production of the said documents through Court by taking notice to the bank, that the bank furnished only the xerox copies of the documents and they could not be marked at the time of cross-examination of D.W.2, that during cross-examination of D.W.1 and D.W.3 the suggestion was put to them and they denied the same and that in any event, the discovery was subsequent to the pleadings and it was too much to expect this to find a place in the pleadings.

7. Mr.N.R. Anantharamakrishnan, learned counsel appearing for the respondents, submitted that the application was belated, that neither in the affidavit in support of the application under Order 18 Rule 18 of the Code of Civil Procedure nor in the civil revision petition here the revision petitioner has stated as to how the loan applications had any nexus to the issue involved in the suit. The learned Counsel further submitted that the trial in the suit commenced as early as 1996 and the matter has been successfully dragged only the revision petitioner and that in any event, without any basis laid in the pleadings it would not be open to the revision petitioner to invoke the provisions of Order 18, Rule 18 of the Code of Civil procedures.

8. The relevant provision, viz Order 18, Rule 18 runs as follows:-

'The Court may at any stage of a suit inspect any property or thing concerning which any question may arise and where the Court inspects any property or thing it shall, as soon as may be practicable, make a memorandum of any relevant facts observed at such inspection and such memorandum shall form a part of the record of the suit.'

9. Mr.Bhavananatham, learned counsel for the revision petitioner submits that the word 'thing' found in the provision would cover what is required to be done by the revision petitioner in the present application. In other words, the Court can have an inspection of the thing and in the instant case the loan applications for the purpose of deciding the case. This contention of the learned counsel overlooks the expression 'concerning which any question may arise' found in Order 18, Rule 18. It is not made out as to how the inspection of the original loan applications is concerned with the question involved in the suit. The prayer in the application before the lower Court does not stop with that. It seeks permission to the petitioner/plaintiff to take subpoena and to cause production of loan application alleged to have been submitted by the second respondent. It is not as if the documents are readily available for inspection by the court and as already pointed out, there is no basis laid by the revision petitioner that an inspection of the loan applications would serve any purpose with regard to any question in issue in the suit. The lower Court has found that the application has not satisfied the requirements of Order 18, Rule 18 of the Code of Civil Procedure and therefore the same does not merit and consideration. I do not think that the order can be assailed as without jurisdiction. Even otherwise, in my view, this is not a case decided which would entitle the revision petitioner to invoke the provisions of section 115 of the Code of Civil Procedure. The civil revision petition is dismissed. However, there will be no order as to costs. Consequently, the stay petition C.M.P.No.6692 of 1999 is also dismissed.