

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE, TIRUPPUR

PRESENT: Thiru.N.Gunasekaran M.B.A., B.L.,
Principal District Judge, Tiruppur

Friday, the 19th day of July, 2024

Thiruvalluvarandu 2055, Sri Kurothi year, 03rd day of Aadi month

I.A.No. 18/2024in
OS.No.45/2021
(CNR.No.TNTI18-002974-2020)

1. Park Trust
Represented by its Managing Trustee,
Dr.P.V.Ravi
2. Dr.P.V.Ravi
3. T.R.KarthikPetitioners/plaintiffs

..Vs ..

1. K.Manoharan
2. R.AnushaRespondents/ Defendants

On 16.07.2024, the petition came before me in the presence of Thiru.S.Bharath, Counsel appearing for the petitioners and Thiru.N.V.Giri, B.Sc., B.L., Counsel appearing for the 1st respondent and Thiru.A.Jeyakumar, Counsel appearing for the 2nd respondent and endorsement made as no counter and upon perusing the petition, counter filed by the 1st respondent and connected records, having stood over for consideration, this Court delivers the following:

ORDER

This is the petition filed under Section 151 of the Code of Civil Procedure to order to re-open the suit for recalling of PW4 for further

Dated:19.07.2024

Principal District Court, Tiruppur

examination touching upon the valuation appraisal report of the suit property and for recording the oral evidence of the Advocate Commissioner Mr.P.V.Prakash.

2) **Petition averment in brief reads as follows:-**

2.1. The 3rd petitioner is the one of the Trustees of Park Trust. He filed this affidavit on behalf of the Trust and also he aware of the facts of the case from his own knowledge. The suit has been filed for the reliefs of cancellation of a sale deed and other reliefs. In the above suit, the plaintiffs have caused examination of PW.4, the Branch Head of Union Bank of India, SME Branch for giving evidence touching upon the valuation of the suit property for the purpose of advancing certain loan based on the security created over the suit property. However, even though PW.4 was examined on 03.04.2024, he was unable to depose to the crucial facts of arriving at the valuation of the suit property and stated that the valuation report done by the said Bank was not done at the branch. Several shortcomings were elicited in the panel valuer report submitted by PW.4 and therefore, the valuation process done by the bank officials will be of vital assistance in enabling this Court to appreciate the correct valuation of the suit property.

2.2. PW.4, having been summoned to depose regarding the valuation of the suit property, ought to have obtained and produced the valuation report done by the bank's officials and only then the said witness can be said to have performed his duty to this Court and he should have been permitted to depart. However, PW.4 has not discharged his duty as a witness summoned by this Court, particularly with respect to the crucial fact of valuation of the suit property.

2.3. The valuation of the suit property as on the date of the impugned deed in Ex.A.16 was much higher than the value disclosed as sale consideration and this goes to show that the document was obtained by coercion and undue influence, by exploiting the indebtedness of the plaintiffs. Therefore, it has become necessary to revoke the permission granted to PW.4 to depart and recall him to give further evidence and produce the valuation appraisal done by the bank's officials in respect of the suit property. Unless the plaintiff is permitted to do so, great prejudice and hardship will inure to the plaintiff, whereas if the petition is allowed, no prejudice will occasion to the adverse party. Hence, the petition.

3) Counter statement filed by the 1st respondent in brief read as follows:-

3.1. The petition is false, frivolous, vexatious and not maintainable both under law and on the facts of the case. The petitioners have to strict proof of all the allegations made in the affidavit except those that are specifically admitted herein. The petition is highly belated and highly vexatious one. This petition is filed after evidences are closed and when the matter was posted for arguments.

3.2. It is the usual practice of the petitioners / plaintiffs to file one petitioner and another in order to protract the proceedings. Already there is an order of Hon'ble High Court of Madras direction to complete the proceedings within four months and that prescribed period is already over. Therefore, at this stage filing of the reopen petition and recall of PW4 and examination of Advocate Commissioner are not at all maintainable and not necessary for this case and the petitioners' intention is also very clear to delay the proceedings.

3.3. Suit is for the cancellation of sale deed and for which the examination of Advocate Commissioner and for which the examination of bank manager who is PW4 is not at all required under law. After examination of PW4 and after marking the registered mortgage deed and valuation report, the further examination of PW4 is not at all necessary.

3.4. PW4 has not discharged his duty as a witness summoned by this court particularly with the respect to the crucial fact valuation of the suit property is not correct and not admitted. Actually, PW4 is the witness of the plaintiff and therefore, the respondents/plaintiffs have no right to take such a stand against his own witness and even otherwise PW4 bank manager deposed before this court relating to the mortgage deed in detail.

3.5. The valuation of the suit property as on the date of the date of the deed, Ex.A16 was much higher than the value disclosed as sale consideration and this goes to show that the document was obtained by coercion and undue influence by exploiting the indebtedness of the plaintiffs are all false and not admitted by this defendant.

3.6. It has become necessary to revoke the permission granted to PW4 to depart and recall him to give further evidence and produce the valuation, appraisal done by the bank officials in respect of the suit property are all false and not admitted by the respondent/defendant. There is no merit in this application. If the petition is allowed, this respondent will be exposed to irreparable loss and hardships and hence, the Petition is liable to be dismissed.

4) The Counsel for the 2nd respondent has made an endorsement as no counter on the side of 2nd respondent.

5) **The Point for consideration is**

Whether the suit is to be re-opened for recalling of PW4 for further examination touching upon the valuation appraisal report of the suit property and for recording the oral evidence of the Advocate Commissioner?

6) No oral or documentary evidence was let in from either of the party.

7) **POINT:-**

Both side heard. Records perused. Suit is for the relief of cancellation of sale deed, permanent and mandatory injunction. The petition under order is filed to re-open the case by enabling the petitioner / plaintiff to examine the Advocate Commissioner as prayed in I.A.No.16/2024 and to recall PW4 for further examination as prayed in I.A.No.17/2024. The aforesaid petitions in I.A.No.16/2024 and 17/2024 accompanied by petition under order viz; I.A.No.18/2024 are filed when the stage of the suit is in argument. There is also direction from the Hon'ble High Court, Madras to dispose the suit within the period of stipulated time as per Order; dated 27.11.2023 in C.M.A.No.1828 and 799 of 2022 and C.M.P.No.13120 of 2022. On enquiry, this court hold that the petition in I.A.Nos.16/2024 and 17/2024 are liable to be dismissed and in consequence, the petition under order is also liable to be dismissed since the necessity for re-open of the case does not exist.

8) Therefore, this court is not inclined to allow the petition to seek re-open the suit for recalling of PW4 for further examination touching upon the valuation appraisal report of the suit property and for recording the oral evidence of the Advocate Commissioner for the reasons stated therein. Point is answered accordingly.

Dated:19.07.2024

Principal District Court, Tiruppur.

In result, this Petition is dismissed.

Dictated to the Steno-typist, typed by her as directly on Computer, corrected and pronounced by me in the open Court dated this the 19th day of July, 2024.

Principal District Judge,
Tiruppur.

Draft/Fair Order
I.A.No. 18/2024 in
OS.No.45/2021
Dated:19.07.2024
P D J Court, Tiruppur.