



C.R.P(MD)No.2302 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.04.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.2302 of 2022
and
C.M.P(MD)No.11064 of 2022

1.Samayamuthu

2.Karuppasamy

...Petitioners/Petitioners/
Plaintiffs

Vs.

1.State of Tamilnadu
Represented by the District Collector,
Sivagangai District.
Sivagangai.

2.The District Backward Class Welfare Officer,
District Backward Class cum Most Backward,
Class Welfare Department,
Sivagangai District,
Sivagangai.

3.The Sub Registrar,
Thiruppuvanam Sub Registration Office,
Thiruppuvanam Taluk,
Sivagangai District.

... Respondents/Respondents/
Defendants



C.R.P(MD)No.2302 of 2022

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order and decree dated 20.10.2022 made in I.A.No.6 of 2022 in O.S.No.4 of 2020 on the file of the District Munsif Cum Judicial Magistrate, Thiruppuvanam, Sivagangai District.

For Petitioner : Mr.G.Gomathi Sankar

For Respondents : Mr.M.Siddharthan
Additional Government Pleader

ORDER

The petitioners are the plaintiff before the District Munsif cum Judicial Magistrate, Thiruppuvanam, Sivagangai District, in O.S.No.4 of 2020. The petitioners have filed the said suit for declaration and for permanent injunction restraining the respondents/defendants from interfering with the peaceful possession and enjoyment of the property.

2. The petitioner had filed I.A.No.6 of 2022 under Order 16 Rule 1 of C.P.C., read with Rule 75 of the Civil Rules of Practice on 27.07.2022. The said application was perhaps required to be filed under Order 16 Rule 6 of C.P.C to summon the documents. I.A.No.6 of 2022 was filed after the evidence of D.W.1 was recorded on 16.03.2022, when the case was listed for arguments. On behalf of the defendants, 1 witness



C.R.P(MD)No.2302 of 2022

was examined and 7 exhibits were marked, which included Ex.D.7. The

Trial Court rejected the application filed by the petitioner with the

following observations:

"6.அசல் வழக்கில் திருப்புவனம் வட்டாச்சியர் பி.சா.1 ஆக விசாரணை செய்யப்பட்டு அவரது விசாரணையில் பி.சா.1 முதல் 7 வரை ஆவணங்கள் குறியீடு செய்யப்பட்டுள்ளது. பி.சா.1 சாட்சியாக விசாரணை செய்யப்பட்டு, அவர் மூலம் குறியீடு செய்யப்பட்டுள்ள பி.சா.ஆ.7 ஆவணத்தின் மீதியுள்ள பக்கங்கள் நீதிமன்றத்திற்கு வரவழைக்க வேண்டும் என்று மனுவில் கூறப்பட்டுள்ளது. நில அளவை புத்தகங்கள் உள்ளிட்ட கிராம கணக்குகளை ஒப்படைப்பதற்கு அனுமதி கோரப்படும் பட்சத்தில் மேற்படி ஆவணங்களின் சான்றிட்ட நகல் கோரி மேற்படி அலுவலகங்களில் மனு செய்யப்பட்டதா, அந்த விண்ணப்பத்தின் நிலை என்ன, அவ்வாறு மனு தாக்கல் செய்யப்பட்டும் நகல் வழங்கப்படவில்லை என்பதில் நீதிமன்றம் திருப்தி அடைந்தால் மட்டுமே ஆவணங்களை வரவழைக்க அழைப்பாணை அனுப்ப வேண்டும் என்று உரிமையியல் நடைமுறை விதி 75ல் குறிப்பிட்டுள்ள நிலையில், அவ்வாறான அடிப்படை விதிகள் இம்மனுவில் பின்பற்றப்படாத நிலையில் மனுதாரர்களின் நிலைநிற்கத்தக்கதல்ல என்று இந்நீதிமன்றம் முடிவு காண்கிறது."

3. The relevant portion of the deposition of D.W.1 on 21.03.2022

reads as under:-

மி.வா.சா.ஆ.6 ஆவணத்தின் நகல் வட்டாச்சியருக்கும், மாவட்ட கருவூலம், கிணை கருவூலகத்திற்கு மட்டும் தான் அனுப்பப்பட்டது என்றாலும் வாதிகளின் தந்தை பஞ்சநாதன், சங்கிலிகோன் ஆகியோருக்கு அனுப்பப்படவில்லை என்றாலும் சரிதான். மி.வா.சா.ஆ.7 ஆவணத்தில் சர்வே எண் மற்றும் கோப்பு நடவடிக்கை எண் விவரங்கள் எதுவும் இல்லை என்றால் சரிதான். மி.வா.சா.ஆ.7 ஆவணத்தில் முழு ஆவணத்தையும் தாக்கல் செய்யாமல் பக்க எண்.167, 168, 169, 170, 171



C.R.P(MD)No.2302 of 2022

மட்டும் தாக்கல் செய்துள்ளோம் என்றால் சரிதான். மேற்படி முழு ஆவணத்தையும் பார்த்தால்தான் உண்மை விவரம் தெரியவரும் என்றால் சரிதான். மி.வா.சா.ஆ.7 ஆவணத்தில் உள்ள பயனாளிகள் பட்டியல் புல எண்.444/3B1க்குரியது என்றாலும் தாவா சொத்துக்குரியது இல்லை என்றாலும் சரியல்ல. ஏனவேதான் நான் முழு கோப்பையும் மறைத்துள்ளேன் என்றால் சரியல்ல. எனது நிகுபண வாக்குமூலத்தில் ராஜேந்திரன் எந்தெந்த சர்வே எண்களை எந்தெந்த ஆவணம் மூலமாக அரசாங்கத்திற்கு பதிவு செய்து கொடுத்தார் என்ற விவரத்தை சொல்லவில்லை என்றால் சரிதான். அரசாங்கத்திற்கு இராஜேந்திரன் எந்த வருடம் பதிவு ஆவணம் எழுதி கொடுத்தார் என்ற விவரம் தெரியுமா என்றால் தெரியாது.

4. The learned counsel for the petitioner submits that the petition has been filed on the strength of Rule 75 of the Civil Rules on Practice and submits that an appropriate application should have been correctly mentioned as Order 13 Rule 10 of CPC.

5. The specific case of the petitioners is that a land in S.No.444/3B consists 1 acre and 13 cents. It was originally assigned in favour of the original assignees namely, Selva Nachiyar, (the father of the petitioners herein), Late.Sangili and Late.Panjunathan. It was later sub divided as R.S.No.444/3B1 and an extent of 89 cents and balance of land out of 1 acre 13 cents was in R.S.No.444/3B2 and assigned in favour of one Rajendran.



C.R.P(MD)No.2302 of 2022

WEB COPY

6. It is submitted that the original assignees of 19 cents of land in R.S.No.444/3B1, sold the entire extent of land by a sale deed dated 03.04.1998 including 1 acre 13 cents, which was assigned to the original assignees namely, Selva Nachiyar, the petitioners' father, Late.Sangili and Late.Panjunathan. Therefore, necessity arose for summoning the records of the Revenue Department pursuant to the evidence given by the Thasildar, Tiruppavanam, who deposed evidence on behalf of the defendants.

7. The learned Additional Government Pleader for the respondents submits that the application was filed to fill up the lacuna in the evidence long after the evidence was recorded. It is submitted that the intention of the petitioner is only to delay the proceedings by prolonging the longevity of the proceedings. It is submitted that Rule 75 of Civil Rules of Practice contemplates a procedure before the summons can be issued under Order 16 Rule 16 of C.P.C. It is submitted that before an application for summon can be issued, the plaintiff is required to issue a notice in Form-23.



C.R.P(MD)No.2302 of 2022

WEB COPY

8. Reference is made to Rule 75(3) of the Civil Rules of Practice as per which no Court shall issue summons unless it considers the production of the original necessary or satisfy that the application for a certified copy has been duly made and has not been granted. It is submitted that the Court shall in every case record its reasons in writing and shall require the applicant to deposit in Court, before the summons is issued, to abide by the order of the Court, such sum as it may consider necessary to meet the estimated cost of making a copy of the document when produced.

9. Reference is made to the decision of the High Court of Andhra Pradesh in the case of ***D.Ram Mohan Rao Vs Sridevi Hotels Private Limited*** rendered in ***2005 (6) ALT 712***, wherein, the High Court of Andhra Pradesh referred to Rule 129 of the Civil Rules of Practice as in force in Andhra Pradesh which para materia with Rule 75 of Civil Rules of Practice as applicable to Court in Tamil Nadu. Reference is made to Paragraph No.19, wherein, it was held as follows:

"19. Admittedly, in the case on hand, the defendant failed to take any steps for obtaining the certified copies of the



C.R.P(MD)No.2302 of 2022

documents in question from the concerned officer. As a matter of fact, his affidavit was totally silent on the said aspect. Though the learned Counsel for the petitioner submits that it is not possible for a third party to obtain the certified copies of the Income-Tax Returns of a particular assessee, I am unable to accept since unless such an application is made and rejected, it cannot be assumed that it is impossible to obtain the certified copies."

10. It is therefore submitted that the application filed by the petitioner/plaintiff was rightly rejected. It is therefore submitted that the impugned order does not call for any interference. That apart, it is submitted that the petitioners/plaintiffs himself also filed an application for granting a house site and therefore, cannot claim a right based on the alleged assignment which was made long before. It is submitted that the legal heirs of Rajendran gifted the land as early as on 03.04.1998 and therefore, even on that count, the suit itself was barred by limitation. That apart, it is submitted that the petitioner has made false averments in the plaint that Selva Nachiyar was daughter of Irulappa Konar and that she is the wife of Santharaja.

11. By way of rejoinder, the learned counsel for the petitioner place reliance on the decision of this Court in the case of **Chettia Gounder @ Chettiannan Vs Ganesan, 2013 (6) MLJ 350**. Reference is



C.R.P(MD)No.2302 of 2022

made to Paragraph No.20, which reads as under:

WEB COPY

"20. In a civil suit where a document is to be proved, report of an expert may be brought on record in terms of the provisions of the Indian Evidence Act. As per Order 13 Rule 9(1) first proviso a(i) of the Civil Procedure Code, a Court of law is to find out the truth and a party must be permitted to bring in a document of record if it is essential for arriving at a fair decision and for establishing his version of suit claim."

12. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent.

13. I do not wish to give any observations on the merits of the case which has to be decided by the Trial Court after examining the records. The petitioner is claiming right of the property based on the assignment made long before. The land in question reportedly fell in S.No.444/3, which appears to have been sub-divided and portion of the land measuring an extent of 36 ares out of 82 ares was supposed to have been assigned in favour of one Rajendran, whose legal heirs are said to have gifted the land in favour of the respondent on 03.04.1998. It is the case of the petitioner that the entire extent of land has been gifted contrary to the assignment after sub division. These are aspects which go into the merits of the case.



C.R.P(MD)No.2302 of 2022

WEB COPY 14. Order 13 Rule 10 of C.P.C and Order 16 Rule 6 of C.P.C read
as under:



Order 13 Rule 10 of CPC	Order 16 Rule 6 of C.P.C
Rule 10. Court may send for papers from its own records or from other Courts.— (1) The Court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same. (2) Every application made under this rule shall (unless the Court otherwise directs) be supported by an affidavit showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice. (3) Nothing contained in this rule shall be deemed to enable the Court to use in evidence any document which under the law of evidence would be inadmissible in the suit."	Rule 6. Summons to produce document.— Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same."

15. Under Order 13 Rule 10 C.P.C, the Court may send for papers from its own records or from other Courts. Thus, Order 13 Rule 10 of



C.P.C. is not applicable to facts of the case. On the other hand, Order 16

Rule 6 of C.P.C gives wide powers to the Court to issue summons to produce documents.

16. Rule 75 of the Civil Rules of Practice reads as under:-

75. Production of records in the custody of a public Officer other than a Court:-

" (1) A summons for the production of records in the custody of a public officer other than a Court shall be in Form No.23 and shall be addressed to the head of the department concerned and in the case of summons to a District Registrar or Sub-Registrar or Assurances, it shall be addressed to the Registrar or Sub-Registrar in whose office or sub-office, as the case may be, the required records are kept. A summons for the production of revenue papers kept in any office in a district shall in all cases be directed to the Collector of the District.

Provided that where the summons is for the production of Village accounts, including filed measurement books, such summons shall be addressed to the Tahsildar or to the Deputy Tahsildar in independent charge as the case may be.

2) Every application for such summons shall be made by a verified petition setting out (i) the document or documents the production of which is required. (ii) the relevancy of the document or documents; and (iii) in case where the production of a certified copy would answer the purpose. whether application was made to the proper officer for a certified copy or copies and the result of such application.

3) No Court shall issue such a summons unless it considers the production of the original necessary or is satisfied that the application for a certified copy has been duly made and has not been granted. The Court shall in every case record its reasons in writing and shall require the applicant to deposit in Court, before the summons is issued, to abide the order of the Court, such sum as it may consider necessary, to meet the estimated cost of making a copy of the document when produced.



C.R.P(MD)No.2302 of 2022

4) *On production of the documents in obedience to the summons, the Court, unless it thinks it necessary to retain the original shall direct a copy to be made at the expense of the applicant and shall with all convenient speed return the original retaining the copy.*

5) *Unless the Court requires the production of the original, every such summons to a public officer shall stated that he is at liberty to produce instead of the original, a copy certified in the manner prescribed by Section 76 of the Indian Evidence Act, 1872.*

6) *Nothing in the above rules shall prevent a Court of its own motion from issuing a summons for the production of public records or other documents in the custody of a public officer if it thinks it necessary for the ends of justice to do so. The Court shall in every case record its reasons in writing."*

17. Procedure are only hand maids of justice and not mistress of law. The Trial Court is required to come to a correct conclusion of facts based on the records that are available before it and documents available with the various authorities which can summoned for being perused and considered.

18. In my view, there is no harm in summoning the records as Order 16 Rule 6 of C.P.C. specifically empowers Court to issue summons to produce documents.

19. I am therefore inclined to allow this Civil Revision Petition by



C.R.P(MD)No.2302 of 2022

setting aside the impugned order by allowing the prayer of the petitioner in I.A.No.6 of 2022. Consequently, the learned District Munsif Cum Judicial Magistrate, Thiruppuvanam, Sivagangai District is directed to issue suitable summons to the authority concerned to produce the relevant documents called for and thereafter, proceed to pass final judgment and decree on merits within a period of 6 months from the date of receipt of copy of this order. Needless to state that the petitioner shall pay for such summons in accordance with the Rules.

20. The present Civil Revision Petition stands allowed with the above observations. No costs. Consequently, Connected miscellaneous petition is closed.

10.04.2023

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

sn

To

1.The District Munsif Cum Judicial Magistrate,

13/15



C.R.P(MD)No.2302 of 2022

Thiruppuvanam, Sivagangai District

2. The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

C.SARAVANAN,J.

SN



WEB COPY



C.R.P(MD)No.2302 of 2022

C.R.P(MD)No.2302 of 2022

10.04.2023