

In the High Court of Judicature at Madras

Dated : 21.1.2015

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

Civil Revision Petition (PD) No.1526 of 2014 and MP.Nos.1 & 2 of 2014

A.Ganesan

...Petitioner

Vs

1.Vivekanand

2.V.Vignesh

3.V.Kasturi

T.Adhimoolam (died)

4.Settu (a) Thirumurugan

5.V.Vanamayil

6.V.Vidhya

7.ICICI Bank Limited, Cuddalore,
rep.by its Branch Manager,
Cuddalore-2.

8.ICICI Bank Limited by its General
Manager, Mylapore, Chennai.

9.The Muthavalli, Larabsha Durga
Larabsha Durga Premises,
Panruti, Panruti Taluk, Cuddalore Dist.

...Respondents

PETITION under Article 227 of The Constitution of India against the fair and decretal orders dated 24.2.2014 made in I.A.No.142 of 2013 in O.S.No. 47 of 2005 on the file of the First Additional District and Sessions Court, Cuddalore.

For Petitioner : Mr.R.Gururaj

For Respondents 1 to 3 : Mr.T.S.Baskar

ORDER

The petitioner, who is the second defendant in the suit, has come up with the above revision, challenging an order passed by the Trial Court refusing to reopen the evidence of D.W.1 for marking a document.

2. Heard Mr.R.Gururaj, learned counsel for the petitioner/second defendant and Mr.T.S.Baskar, learned counsel for the respondents 1 to 3, who are the plaintiffs.

3. The respondents 1 to 3 herein filed a suit in O.S.No.47 of 2005 on the file of the First Additional District and Sessions Court, Cuddalore praying for a decree of partition and separate possession and for various consequential reliefs. In the course of trial, a document dated 14.5.2000, purporting to give up the rights over certain properties, was sought to be marked during the cross examination of P.W.1. Since P.W.1 admitted her father-in-law's signature alone in the document, without admitting the contents or other signatures, the Trial Court marked that signature alone as Ex.B.14.

4. After the closure of the evidence on the side of the plaintiffs, one witness was examined on the side of the defendants. When the case was posted for further evidence, the second defendant/the petitioner herein took out an application in I.A.No.142 of 2013 for recalling D.W.1 and marking the entire document dated 14.5.2000. That application was rejected by the Trial Court, aggrieved by which, the second defendant is before this Court.

5. The Trial Court was obviously carried away by the fact that the cross examination of PW1 had taken place on several dates and that one signature in the document was already marked as Ex.B.14. This approach is not correct. Though it is not necessary actually to recall D.W.1 for the purpose of marking this document, as she was not a party to the document, the Trial Court is bound to see whether the document is admissible in evidence. Proof of a document and admissibility of a document stand on different footings. The plaintiffs are raising the question of admissibility on the ground that the document required payment of stamp duty and registration. Therefore, even without recalling D.W.1, the Trial Court could have allowed the second defendant to file the document (as it was also available before court) and passed a judicial order on the question of admissibility with reference to the statutory provisions. This approach could have avoided the prolongation of the trial and also invited a judicial order to the question of admissibility. The proper approach in such cases should be to take the document and adjudicate upon the admissibility. If a document is merely allowed to be taken back on the ground that it is not admissible, nothing will remain on record.

6. Therefore, the civil revision petition is allowed to the following extent :

(i) Without recalling D.W.1, the Court below shall adjudicate upon the admissibility of the document dated 14.5.2000, one signature of which alone

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RS

has already been marked as Ex.B.14;

(ii) The adjudication shall be with specific reference to the provisions of the Indian Stamp Act and the Registration Act;

(iii) If the Trial Court holds that the document is admissible, it may permit the marking of the document through D.W.1 by recalling him and allow the plaintiffs to cross examine him; and

(iv) If the Trial Court comes to the conclusion that the document is not admissible, it may follow the procedure prescribed by law for impounding.

It is made clear that the trial shall be completed within a period of three months. No costs. Consequently, the above MPs are closed.

21.1.2015

Internet : Yes

To
The First Additional District and Sessions Court, Cuddalore.

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& MP.Nos.1 and 2 of 2014