

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.10.2015

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THE HONOURABLE MR. JUSTICE **D.HARIPARANTHAMAN**

C.R.P.(PD)Nos.3042 to 3044 of 2015 and
M.P.No.1 of 2015 in CRP No.3042 of 2015

Nesamathi

... Petitioner in all CRPs

vs.

1.T.C.Thangaraj
2.T.C.Sigamani

...Respondents in all CRPs

Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and decreetal order dated 15.06.2015 made in I.A.Nos.184, 185 and 186 of 2015 in O.S.No.463 of 2009 on the file of the learned Sub-Court, Perundurai.

For Petitioner : Mr.N.Manokaran

For Respondents : Mr.A.K.Kumaraswamy

COMMON ORDER

The revision petitioner is the first defendant in O.S.No.463 of 2009. The suit is for declaration and consequential permanent injunction. The petitioner was cross examined as D.W.1 D.W.2 was examined in chief and the case was posted for cross-examination. D.W.2 did not appear before the Court. In such circumstances, the Trial Court eschewed the evidence of D.W.2.

2. The revision petitioner filed I.A.No.184 of 2015 to set aside the order eschewing the evidence of D.W.2; I.A.No.185 of 2015 was filed to recall D.W.2 for further examination and to mark some documents and I.A.No.186 of 2015 was filed to condone the delay in filing and receiving the documents namely :-

- i) certified copy of the Will dated 31.03.2013 executed by Chinnasamy
- ii) Certified copy of the death extract dated 31.07.20105 of Ramasamy

3. The Trial Court dismissed all the interlocutory applications viz., I.A.Nos.184 to 186 to 2015 by separate orders on 15.06.2015. Hence, the petitioner has come up with these revision petitions.

4. Heard both sides.

5. When the matters came up for hearing on 06.08.2015, the learned counsel for the revision petitioner undertakes to file the affidavit of Karthikeyan, who was examined as DW.2 that he would be present in Court for further examination. The same was recorded by me. Accordingly, an affidavit was filed before this Court by Mr.Karthikeyan, who was examined as D.W.2. In the said affidavit, he undertakes to appear before the Trial Court without taking any adjournment. The undertaking given by Mr.Karthikeyan is recorded. The learned counsel for the petitioner has also undertaken that

D.W.2 would be present before the Trial Court for cross examination. The same is also recorded.

6. In these circumstances, I am of the view that the order dated 15.06.2015 passed in I.A.Nos.184 and 185 2015 is liable to be set aside and accordingly, the same stands set aside. D.W.2 shall be present before the Trial Court to facilitate the respondents/plaintiffs to cross examine him.

7. As far as I.A.No.186 of 2015 is concerned, the Trial Judge was swayed by the attitude of D.W.2. by not producing the certified copy at the earliest point of time when he was in the box. Further, the apprehension expressed by the learned counsel for the respondents/plaintiffs that the revision petitioner has sought to produce the xerox copy has also no basis, as the learned counsel for the revision petitioner has asserted that the revision petitioner relied only on the certified copy of the Will obtained from the concerned sub-registrar office.

8. As far as death certificate is concerned, I am of the view there cannot be any serious dispute over the same, as it is admitted that death certificate referred to is relating to one Ramasamy and it is admitted by the respondents/ plaintiffs that he is no more.

D.HARIPARANTHAMAN,J.,

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9. In these circumstances, the order dated 15.06.2015 made in I.A.No.186 of 2015 is also set aside. The Trial Court is directed to receive the certified copy of the documents and the documents referred to in I.A.186 of 2015 can be marked through the concerned person. However, I make it clear that the revision petitioner cannot take undue adjournments. In the facts and circumstances of the case, the Trial Court is directed to dispose of the suit in O.S.No.463 of 2009, within a period of six months from the date of receipt of a copy of this order.

The revision petitions are disposed of accordingly. No costs
Consequently, connected miscellaneous petition is closed.

15.10.2015

Index : Yes/No

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To

The Sub-Court, Perundurai.

C.R.P.(PD)Nos.3042 to 3044 of 2015