

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2015

CORAM:

THE HON'BLE MR. JUSTICE D.HARIPARANTHAMAN

C.R.P.No.3315 of 2015

and

M.P.No.1 of 2015

1.S.Sankaran

2.Saileswari

3.Shanmugasundaram

4.Kumaresan

5.Mahabarath

... Petitioners/Petitioners/Defendants

Vs.

S.Ekambaram

... Respondent/Respondent/Plaintiff

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 17.02.2015 made in I.A.No.1080 of 2014 in O.S.No.458 of 2009 on the file of the District Munsif Court, Chengalpattu.

For Petitioners : Mr.B.Sivakumar
For Respondent : Mr.M.Rajasekhar

ORDER

The revision petitioners are the defendants in O.S.No.458 of 2009 on the file of the District Munsif Court, Chengalpattu. The respondent herein is the plaintiff therein. The details of the suit are not relevant for disposal of this Civil Revision Petition.

2. The revision petitioners had filed an application in I.A.No.1080 of 2014 to eschew paragraphs 5 to 9 of the proof affidavit filed by the respondent/plaintiff who was examined as P.W.1. The respondent/plaintiff sought to mark 13 documents as Exs.A.1 to A.13, whereas only 11 documents were filed along with the plaint. The Trial Court took up the proof affidavit on file and also marked the Exhibits A.1 to A.13.

3. In those circumstances, the revision petitioners/defendants filed an application in I.A.No.1080 of 2014 to eschew paragraphs 5 to 9 of the proof affidavit filed by the respondent/plaintiff. The Trial Court passed an order dated 17.02.2015 rejecting the aforesaid application filed by the revision petitioners/defendants and aggrieved over the said order, the present Civil Revision Petition has been preferred.

4. The learned counsel for the revision petitioners has submitted that the proof affidavit was not in consonance with the plaint averments and it contains materials which are not pleaded in the plaint.

5. Secondly, it is contended that the Trial Court had committed an error in not only receiving the two documents that were not filed along with the plaint, but also marking those documents without any application by the plaintiff to receive those documents under the relevant provisions of CPC.

6. On the other hand, the learned counsel for the respondent/plaintiff has submitted that as far as producing two new documents that were not filed along with the plaint is concerned, the respondent/plaintiff had committed an error in not filing application to receive those documents. Thus, according to him, those documents could not have been marked as Exhibits. The learned counsel also fairly submitted that the order could be set aside to the said extent and the matter can be remanded back, so as to file appropriate application to receive those two documents.

7. The learned counsel for the respondent further submitted that the proof affidavit need not contain verbatim averments made in the plaint and the revision petitioner can cross-examine the witness, namely P.W.1, based on the proof affidavit and if any materials are inadmissible in evidence, the same can be considered by the Trial Court at the time of disposal of the suit.

8. I have considered the submissions made by both sides.

9. As far as the first issue that the proof affidavit was not in consonance with the plaint averment and the proof affidavit contains materials which are not pleaded in the plaint is concerned, I am not in agreement with the said submission. As rightly contended by the learned counsel for the respondent, the rights of the revision petitioners are protected, as they can very well cross-examine P.W.1 and if any facts are stated to be not pleaded, the same can be brought out by way of cross-examination of P.W.1 and also by bringing to the notice of the Trial Court.

10. The Trial court can consider as to whether any portion of the evidence of P.W.1 is inadmissible in evidence based on the submission

made by both sides, at the time of final disposal of the suit. Hence, there arises no question of eschewing some paragraphs in the proof affidavit.

11. In these circumstances, I do not find any infirmity in the order of the Trial Court in refusing to eschew paragraphs 5 to 9 of the proof affidavit. But the matter does not rest therein. The Trial Court has committed an error in receiving the two documents which were not filed along with the plaint, without any application to receive those documents.

12. As stated above, the learned counsel for the respondent has fairly submitted that it was only a technical error and therefore, to that extent the order can be set aside and the matter can be remanded back, so as to file an application to receive those documents.

13. I am also of the view that those are technical matters and the case is only at the stage of commencement of trial and P.W.1 is yet to be examined. Hence, a formal application is enough to receive those documents.

14. In these circumstances, the Civil Revision Petition is disposed of setting aside that portion of the order of the Trial Court in marking those documents as Exs.A.10 and A.11 and the respondent is at liberty to file appropriate application to receive those documents and to mark them in the manner known to law.

15. Further, taking note of the fact that the suit is of the year 2009, a direction is issued to the Trial Court to dispose of the suit in O.S.No.458 of 2009 within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

pgp

To

The District Munsif Court,
Chengalpattu.

1 cc to Mr.B.Sivakumar , Advocate Sr.No.47947

1 cc to Mr. M.Raja Sekhar, Advocate Sr.No.48162

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