

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 04.02.2015

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P (PD)No.472 of 2015
and M.P.No.1 of 2015

1.Ms.Janata Paper Packaging
Rep. By its Managing Partner
Mr.Jayaraman
No.226, KRP Layout
7th Cross, Singanallur,
Coimbatore – 641 005.

2.Mr.K.Jayaraman

.. Petitioners / Defendants 1 & 2

Vs

1.K.Selvaraj

.. 1st Respondent / 3rd Defendant

2.K.Palanisamy

.. 2nd Respondent / Plaintiff

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and final order dated 03.03.2014 passed by the learned II Additional District Munsif, Coimbatore in I.A.No.647 of 2013 in O.S.No.291 of 2004.

For Petitioners : Mr.L.Mouli

For Respondent : Ms.P.T.Asha for
M/s.Sarvabhauman Associates

ORDER

This revision is directed against the order dated 03.03.2014 passed by the learned II Additional District Munsiff, Coimbatore in I.A.No.647 of 2013 in O.S.No.291 of 2004.

2. The petitioners are defendants in O.S.No.291 of 2004. The second respondent has filed the suit against the petitioners and the first respondent praying for a permanent injunction restraining the defendants, their men and agents from in any way interfering with the peaceful possession and enjoyment of the suit property.

3. The case of the plaintiff is that by virtue of a lease agreement dated 26.03.2003, he has inducted as a tenant and is carrying on business in the suit property under the name and style of Balaji Spinning Mills. The plaintiff has further stated that the first defendant partnership firm is the absolute owner of the suit property .

4. The third defendant has filed the written statement stating that the suit property belongs to the third defendant and he is the absolute owner of the property. The third defendant filed

I.A.No.647 of 2013 to recall DW2 for marking documents. The third defendant was examined as DW2 and he wanted to mark documents through him. Earlier, the third defendant filed I.A.No.143 of 2013 to summon Tahsildar, Coimbatore South Taluk to produce the subdivision record and partnership deed of M/s.Janatha Paper Packaging from the custody of HDFC Bank. The applications were allowed and the records were produced from the Tahsildar office and the Bank.

5. Subsequently, the present application is filed for recalling and marking of the documents. The application was resisted by the petitioners stating that the third defendant has admitted during cross examination that by a partnership deed dated 01.04.1997, the second defendant in the suit has been given the power of Managing Partner of the first defendant firm and the documents now sought to be marked are irrelevant to decide the issue in the suit. It was further contended that the application was filed to protract the proceedings. However, the learned II Additional District Munsif, Coimbatore allowed the application. Aggrieved by the order, the present revision is filed.

6. Mr.L.Mouli, learned counsel for the petitioner submitted that the court below erred in allowing the application without considering the fact that DW2 in his cross examination admitted that

the property was assessed in the joint names of the petitioners and the first respondent and also partnership deed dated 01.04.1997. The learned counsel further submitted that to fill up the lacuna, witnesses cannot be recalled or to displace the evidence when DW2 has admitted certain facts in his cross examination.

7. Per contra, Ms.P.T.Asha, learned counsel for the respondents submitted that the first defendant firm has become defunct and the third defendant is the absolute owner of the property. To prove the case of the defendant, the third defendant earlier filed application which was rightly allowed by the court and only to mark those documents, this application was filed. It is further contended that the petitioners are having opportunity to oppose at the time of marking of the documents and by allowing the application, no prejudice would be caused to the petitioners.

8. It is seen that the second respondent had instituted the suit only for bare injunction contending that the suit property belongs to the firm. The defendants 1 and 2 have already marked a partnership deed through DW1. The third defendant wanted to mark the partnership deed of the year 1995 to establish his case.

9. Admittedly, the petitioners have not challenged the order passed by the trial court in I.A.No.143 of 2013. The trial court has allowed the application only to give an opportunity to the third defendant to establish his case. As rightly contended by the learned counsel for the first respondent, the petitioners are having opportunity to oppose at the time of marking of the documents. It is settled law that mere production or marking of the documents would not amount to proof of document. Hence, I do not find any illegality or irregularity in the order impugned in this revision.

10. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

04.02.2015

Index:Yes/No
Internet:Yes/No
rgr

To

The II Additional District Munsif,
Coimbatore.

K.KALYANASUNDARAM,J

rgr

Order in
C.R.P(PD)No.472 of 2015

04.02.2015