



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 9/1/2015

C O R A M

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

C.R.P. PD(MD) No.1420 of 2014

and MP(MD)No.1 of 2014

1. Durairaj

2. Ramaraj

...Petitioners/Respondent/Defendant
Vs.

Subbuthai

...Respondent/Petitioner/Plaintiff

Petition filed under Article 227 of the Constitution of India against the fair and decreetal order passed in I.A.No.188 of 2013 in O.S.No.215 of 2010 on the file of the District Munsif-cum-Judicial Magistrate Court, Andipatti dated 4/11/2013.

For petitioners

... Mr.T.Selvan

For respondent

... Mr.R.Suriyanarayanan

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O R D E R

This Civil Revision Petition has been filed against the fair and decreetal order passed in I.A.No.188 of 2013 in O.S.No.215 of 2010 on the file of the District Munsif-cum-Judicial Magistrate Court, Andipatti dated 4/11/2013.

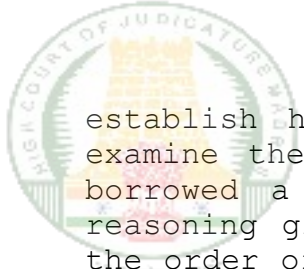
2. The plaintiff had filed an application in I.A.No.188 of 2013 under Order 16 Rule 1 (2) of the Code of Civil Procedure to summon the Secretary of M.D. Spl.67 Primary Agricultural Cooperative Bank and mark certain documents through him. The District Munsif-cum-Judicial Magistrate, Andipatti allowed the application on payment of Rs.250/-. Aggrieved by the same, the petitioners/defendants had come up with the present Civil Revision Petition.

3. The petitioners, who are the defendants resisted the application contending that earlier, similar application in I.A.No.249 of 2012 was filed for the same relief by the plaintiff and for the reasons best known, she had not pressed the same. Therefore, he cannot file this application.

4. The learned District Munsif-cum-Judicial Magistrate, Andipatti, who heard the application held that the plaintiff is going to examine the Secretary of the Bank only to establish the loan that he had borrowed from the said Bank which would be useful in the adjudication of the suit. Therefore, in the interest of Justice, the learned District Munsif had allowed the application on payment of Rs.250/-. Aggrieved by the same, the defendants/petitioners had come up with the present Civil Revision Petition.

5. The objection of the counsel for the petitioners is that earlier application viz., I.A.No.24 of 2013 was not pressed. Therefore, the present application I.A.No.188 of 2013 cannot be allowed.

6. The learned counsel for the respondent/plaintiff has contended that the first and second defendants had created a Will and on the strength of the same, trying to alienate the suit second and third items of the property. Therefore, it becomes incumbent on his part to



establish his title. To prove her ownership, the plaintiff wants to examine the said witness viz., the Secretary of the Bank as she had borrowed a loan based on the mortgage of the suit properties. The reasoning given by the plaintiff/respondent is convincing and therefore, the order of the District Munsif, Andipatti, allowing the same is correct and the same need not be interfered with.

7. In the result, this Civil Revision Petition is dismissed and the order of the District Munsif, Andipatti is confirmed. The District Munsif, Andipatti had allowed the application on payment of cost which has been deposited to the credit of the suit according to the respondent. The parties are directed to co-operate for the completion the trial before 31st March, 2015 and the learned District Munsif is directed to dispose of the suit itself on or before 30th April, 2015. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

To

The District Munsif-cum-Judicial Magistrate, Andipatti.

C.R.P.PD (MD) No.1420 of 2014
09.01.2015

mvs

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