



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :17.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.R.P. (PD) (MD) No.2688 of 2015
and M.P. (MD) No. 1 of 2015

1.T.Janatha
2.S.Rohini

: Petitioners/Petitioners/Defendants 1 and 2

Vs.

1.R.Devaki
2.R.Balaji
3.R.Suresh

:Respondents/Respondents/Plaintiffs

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India against the fair and decreetal order, dated 06.03.2015 made in I.A.No.417 of 2015 in O.S.No.177 of 2010 on the file of the V Additional District Judge, Madurai.

For Petitioners : Mr.S.Subbiah

ORDER

Challenge in this Civil Revision Petition has been made to the fair and decreetal order, dated 06.03.2015 and made in I.A.No.417 of 2015 in O.S.No.177 of 2010 on the file of the learned V Additional District Judge, Madurai.

2.The revision petitioners herein are the defendants 1 and 2 in O.S.No.177 of 2010, whereas the respondents herein are the plaintiffs. It is manifest from the records that the respondents have filed the above suit in O.S.No.177 of 2010 against the revision petitioners herein and one Pandi, seeking a direction against the defendants 1 & 2 to divide the suit property by metes and bounds and allot 5/9th share in the schedule property to the plaintiffs and for permanent injunction restraining the defendants 1 & 2 from in any way altering the structure of the suit property or by leasing out or creating any kind of encumbrance till the suit property is divided.

3. The suit was contested by the revision petitioners by filing their written statements. During the pendency of the suit, the revision petitioners have taken out an application in I.A.No.417 of 2015 under Order 13 Rule 10 and Section 151 of C.P.C r/w Rule 74 of the Civil Rules of Practice to send for the entire case bundle relating to the suit in O.S.No.64 of 1983 from the file of the II Additional Subordinate Judge to the file of the V Additional District Judge, Madurai.

4. It is also to be noted that the suit in O.S.No.64 of 1983 seems to have been filed by one Ananda Padmanabhan being the next friend of minor plaintiffs Balaji and Suresh as against five defendants therein seeking



the prayer of declaration to declare the partition deed, dated 20.03.1982 said to have been executed by the first defendant therein for himself and on behalf of the plaintiffs whereunder, the first defendant is alleged to have received a cash consideration and had given up his rights and that of the minor plaintiffs in favour of the second respondent is not true, invalid and not binding on the plaintiffs; for partition of the suit properties by metes and bounds and to allot 10/24 share to the plaintiffs out of the suit properties and also for rendition of accounts. Besides this prayer, they have also sought appointment of receiver to manage the suit properties from the date of plaint till the date of delivery.

5. The petition filed by the revision petitioners was resisted by the respondents/plaintiffs. After hearing both sides, the learned V Additional District Judge, Madurai, has proceeded to dismiss the application. Challenging the said order, dated 06.03.2015, now the present Civil Revision Petition is filed.

6. Mr.S.Subbiah, learned counsel appearing for the revision petitioners while advancing his arguments has drawn the attention of this Court to the counter statement filed by the respondents/plaintiffs. In paragraph No.8 of the counter statement filed by the respondents, they have stated that if the Court feels that it is necessary to call for the records, then the Court shall pass necessary and appropriate orders. The learned counsel has further submitted that the specific consent given by the respondents/plaintiffs was ignored and lost the sight of by the trial court and the trial judge without taking into note of the implications, the nature of the petition and the purpose for which this petition is filed, has proceeded to dismiss the petition and that the order of the trial Court appears to be perverse in nature and is liable to be set aside.

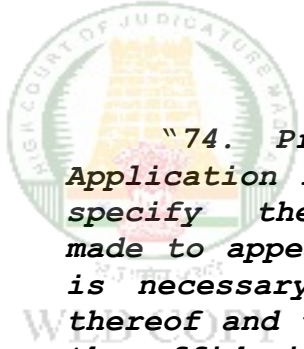
7. Order 13 Rule 10 of the Code of Civil Procedure reads as follows:

"Order 13 Rule 10: Court may send for papers from its own records or from other Courts.-(1) The Court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same.

(2)Every application made under this rule shall(unless the Court otherwise directs) be supported by an affidavit showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

(3) Nothing contained in this rule shall be deemed to enable the Court to use in evidence any document which under the law of evidence would be inadmissible in the suit."

<https://hcservices.courts.gov.in/hcservices/> In this connection, this Court feels that it may be useful to have reference to Rule 74 of the Civil Rules of Practice. The Said Rule is extracted as under:



"74. Production of records in the custody of a Court.-(1) An Application for the production of records in the custody of a Court shall specify the particular documents required to be produced Unless it is made to appear to the Court that the production of the original documents is necessary, the party shall be required to obtain and file copies thereof and the original shall not be sent for If the Court dispenses with the affidavit mentioned in rule 10(2) of Order XIII of the Code it shall record in writing the reasons for so doing.

(2) When a Court finds it necessary to require the production of the records of another Court it shall address a letter of request as in Form No.22 to the Presiding Judge of that Court.

(3) Where the document to be sent for by a Court either from its own records or from those of another Court under rule 10 of Order XIII of the Code is an account book or other document not being a record(e.g. Judgement, decree, written statements, etc.) which has to be in the custody of a Court and belong to a person other than a party at whose instance, it is sent for the Court may require the party to deposit in Court before the letter of request is issued, such sum as it may consider necessary to meet the estimated cost of making a copy of the document when produced.

(4) When the letter of request is to be issued by the Court itself acting on its own motion it shall be open to the Court to call upon either party to make the deposit as aforesaid.

(5) On production of the document in compliance with the letter of request the court shall cause a notice to be affixed to the notice board that the document has been received and that the parties may apply to the Court for inspection of the same. The Court shall not grant inspection to either party, unless it is satisfied that the application is made with the consent of the person to whom the document belongs . After the document has been admitted in evidence the Court shall unless it considers it necessary to retain the original, direct the parties to specify the portion and portions thereof on which they respectively rely, and require a copy to be made of the same at the expense of the party requiring such portion and shall thereafter with all convenient speed, return the original to the Court from which it was received, retaining the copies as part of the record."

9. In the affidavit filed in support of the revision petition, it is stated that perusal of the written statement will reveal that the present suit is a frivolous and vexatious suit. The respondents/plaintiffs are guilty of fraud and suppressed the earlier legal proceedings in O.S.No.64 of 1983 on the file of the II Additional Subordinate Court, Madurai and it has also stated that the suit in O.S.No.64 of 1983 was instituted by the respondents 2 and 3/Plaintiffs 2 and 3 at the instigation of their mother viz., the first respondent/first plaintiff as well as their maternal uncle one Ananda Padmanabhan as against their father Rajaram and grandmother Meenambal. That suit went up to the High Court . The appeal suit in A.S.No.1257 Of 1986 was heard by the Division Bench of the High Court on merits and ultimately, the High Court was pleased to repel all the false contentions raised by the plaintiffs in the suit in O.S.No.64 of 1983 and passed a decree and judgment on 24.07.2003.



10. According to the revision petitioner, the said decree and judgment has become final since no appeal has been preferred against the said judgment. They have also stated that the present suit has been laid after a lapse of 7 ½ years by suppressing the material fact as if they were not aware of the legal proceedings in O.S.No.64 of 1983 as well as the appeal suit in A.S.No.1257 of 1986, which attained finality on 24.07.2003. Only for the purpose of establishing the fact that the present suit has been instituted vexatiously with false statement as if they were not aware of the earlier proceedings, the revision petitioners being the defendants in the suit have approached the lower Court with the above said application to send for those documents. The respondents have also conceded in their written statement in paragraph No.8 by saying that if those documents are very much essential, there may not be any impediment in sending for the records relating to the suit in O.S.No.64 of 1983 from the file of the II Additional District Court, Madurai to the file of V Additional District Court, Madurai. But, unfortunately, the Court below without considering these aspects has proceeded to dismiss the application abruptly, which is liable to be set aside.

11. Keeping in view of the above fact this Court finds that the records relating to the suit in O.S.No.64 of 1983 and the judgment, which was confirmed by this Court in A.S.No.1257 of 1986 vide decree and judgment, dated 24.07.2003, are absolutely necessary so as to substantiate the claims of the defendants.

12. Hence, the revision Petition is allowed at the stage of admission itself and the impugned order, dated 06.03.2015, is set aside and the petition in I.A.No.417 of 2015 is allowed and the learned V Additional District Judge, Madurai, is directed to send for the documents sought for by the petitioners as early as possible from the file of II Additional Subordinate Judge, Madurai. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar
Madurai Bench of Madras High Court,
Madurai.

To,

1.The V Additional District Judge, Madurai.

2.The II Additional Subordinate Court, Madurai.

+1cc to M/S.S.Subbiah, Advocate in SR.No. 72605

TS/01.02.2016/4P-4C/JGB-DP