

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.04.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P.[PD] No.1071 of 2016
and C.M.P.No.5912 of 2016

G.Prakash Chand Jain

... Petitioner

Vs

1.Sri Sivasakthi Vinayagar Temple
Rep. by its Trustees
Suresh
P.Venkatesan @ Kutti

2.Dayalan Naidu
3.M.Venkatesan @ Thambaiah

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order dated 16.04.2015 made in I.A.No.1183 of 2014 in O.S.No.160 of 2010 on the file of the Court of District Munsif, Chengalpattu.

For Petitioner : Mr.S.Raghavan

ORDER

The plaintiff in O.S.No.160 of 2010 pending on the file of the District Munsif, Chengalpattu is the petitioner in the present revision. The suit was filed for a declaration, declaring that the plaintiff, being the owner of the property adjoining the street margin, is entitled to a right of way from all points and right to free and fresh air

and light and for a consequential permanent injunction restraining the defendants therein from in any manner interfering with the enjoyment of the said rights, for a mandatory injunction directing the defendants therein to remove the obstructions put up by them along the road margin and a direction to the defendants to pay costs. The suit came to be filed in 2010. Written statement of the defendants also came to be filed in 2010 itself.

2. In 2014, the revision petitioner/plaintiff chose to prefer an application in I.A.No.1183 of 2014 under Rule 76 of the Civil Rules of Practice, for issuance of a certificate to enable the petitioner/plaintiff to obtain certified copies of Field Measurement Book relating to survey No.370, 'A' register for survey No.328, Adangal for survey No.328 and Chitta for survey No.370/12. In the supporting affidavit, the petitioner/plaintiff has made a bald averment that the revenue officials are hesitant to issue copies of the said documents, because of the pendency of the civil suit. But, no document evidencing the submission of any application for providing him with the certified copies of the above said public documents has been produced. In fact, there is also absence of averment in the supporting affidavit that he applied for certified copies and the same was declined or kept in cold storage. The said application was resisted by the respondents contending that in view of the provisions found in Order VII Rule 14 of C.P.C., the application was not maintainable.

3. The learned trial Judge, after hearing both sides, chose to refer to Rule 75[3] of The Civil Rules of Practice, relating to issuance of summons for production of

documents held that the petitioner was not entitled to the certificate as prayed for. Accordingly, the learned trial Judge, dismissed the said application. It is as against the said order of the trial Court dated 16.04.2015, the present Civil Revision Petition under Article 227 of the Constitution of India has been filed. The matter stands listed today for admission.

4. The submissions made by Mr.S.Raghavan, learned counsel for the petitioner are heard. The certified copy of the impugned order of the trial Court and copies of other documents produced in the form of typed set of papers are also perused.

5. Upon such hearing and after such perusal, this Court is of the view that the revision petition deserves to be dismissed at the threshold with certain observations.

6. Learned counsel for the petitioner has contended that the learned trial Judge, without confining his consideration to the relevant rule, namely Rule 76 of The Civil Rules of Practice, chose to rely upon Rule 75 of The Civil Rules of Practice, which deals with the issuance of summons for the production of documents, with Sub Clause providing an impediment to the Court to summon the documents, unless the Court considers the production of the original necessary or such Court is satisfied that the application for certified copies had been duly made and had not been granted.

7. The learned trial Judge was of the view that the qualification incorporated in Sub Clause [3] of Rule 75 of The Civil Rules of Practice, would equally apply to an application under Section 76 of The Civil Rules of Practice. Learned counsel for the petitioner submits that the same is an erroneous approach made by the learned trial Judge.

8. Of course, if the literal meaning of Rule 76 of The Civil Rules of Practice alone is taken into consideration, the learned counsel for the petitioner shall be right in his submission. On the other hand, any rule of procedure should be approached by the Court, keeping in mind the resultant consequences of either allowing or disallowing such a prayer made under the particular rule.

9. Rule 76 of The Civil Rules of Practice, enables a party to a suit or other proceeding to apply to the Court, wherein the suit or other proceeding is pending, for issuance of a certificate to enable him to obtain a certified copy of a public document from the appropriate authority for being produced in the said suit or proceeding. Simply because a party applies for such certificate, the Court cannot issue such certificate, unless it is of the view that it is just and necessary to issue such a certificate to the applicant. While considering the necessity and justifiability of issuance of such a certificate, the Court should consider whether steps were taken by the applicant to get a certified copy of the public document from the appropriate authority. If applications for issuance of such certificate are indiscriminately entertained and allowed, parties will be inclined to straight away come to the Court

with such an applications seeking certificates to enable them to get certified copies of public documents, which they could have obtained even without such a certificate.

10. The rule shall be interpreted to mean that it shall apply to cases, wherein the party applying cannot get a certified copy of the public document in the ordinary course in case of a document, certified copy is not permitted in the ordinary course. If such an interpretation is not adopted, then the Courts will be flooded with such applications and everyone will be inclined to seek certified copies, only by filing an application before the Court under Rule 76 of The Civil Rules of Practice without first approaching appropriate authority for issuance of certified copy.

11. In addition, the objection raised by the respondent herein cannot also be rejected as having no substance in it. Order VII Rule 14 of C.P.C. makes it incumbent upon the plaintiff to produce documents, on which the plaintiff sues or documents relied upon by the plaintiff, which are in his possession or power in support of his claim. It also enjoins the duty on the plaintiff to enter all such documents in a list and produce it in the Court when the plaint is presented and to deliver the document or a copy thereof, along with the plaint. Sub Clause [2] of Rule 14 of C.P.C. deals with the documents, which are not in the possession or power of the plaintiff. According to the said Sub Clause, besides including the documents in the list, the plaintiff shall state in whose possession or power such document/documents is/are. Pointing out the said provision, the respondent has resisted the application stating that, without filing such a list of documents in accordance with the said rule, the

petitioner/plaintiff cannot be permitted to seek a certificate to enable him to get certified copies of the documents, which had not been included in the list of documents annexed to the plaint.

12. For all the above said reasons, this Court comes to the conclusion that the dismissal of the application filed by the plaintiff/petitioner herein, namely I.A.No.1183 of 2014 cannot be found fault with and the same deserves to be confirmed. However, it shall be open to the petitioner/plaintiff, to file an additional list with the leave of the Court by filing necessary application for that purpose after obtaining certified copies from the concerned authorities and in case, he is not in a position to get certified copies from the concerned authorities despite such application, then to apply for such a certificate at a later point of time, with proof of his having approached the authorities with necessary application for issuance of certified copies and rejection of the application or non-compliance with the application within a reasonable time.

Accordingly, the revision petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

05.04.2016

Index : Yes
Internet : Yes
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To
The District Munsif,
Chengalpattu.

P.R.SHIVAKUMAR, J.

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