

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **09.11.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.1951 of 2016

Giridhar : Petitioner

versus

1.Sridhar

2.Anusuyadevi

3.Kalpana

4.Muralidhar : Respondents

PRAYER: Revision filed against the docket order dated 6.4.2016, in memo in O.S.No.341 of 2003 on the file of Subordinate Judge, Ranipet.

For petitioner :: Mr.P.Seshadri

For respondents :: Mr.T.P.Prabhakaran, for R-4
:: No appearance for R-1
:: R-2 and R-3 unclaimed

ORDER

The first respondent filed a suit for partition in O.S.No.341 of 2013 before the Subordinate Court, Ranipet. The suit was contested by the petitioner in his capacity as the second defendant.

2. Before the Trial Court, the petitioner filed a memo on 24 March 2016 with a prayer to summon Thiru.R.Santhanam of Vellore to produce the original of the partition deed dated 2 February 1997. The request was opposed by the respondents.

3. The learned Trial Judge dismissed the prayer to summon Thiru.R.Santhanam, with an observation that being a third party to the suit, there is no question of summoning him to produce a document. The order passed by the learned Trial Judge dated 6 April 2016 is under challenge in this civil revision petition.

4. The learned counsel for the petitioner submitted that Thiru.R.Santhanam is a senior advocate, who is known to the entire family. Thiru.R.Santhanam partitioned the property on 2 February 1997. The original of the partition deed contain his signature and it was only for the purpose of marking the said document, memo was filed before the Trial Court.

5. The learned counsel for the fourth respondent submitted that there was no such partition as alleged by the petitioner. According to the learned counsel, the family has no connection with Thiru.R.Santhanam and the so called document is a fabricated one, intended to defeat the claim of the first respondent for partition.

6. The suit filed by the first respondent was contested by the second respondent primarily on the ground that there was a partition way back on 2 February 1997, in and by which specified items were allotted to the share of the parties. The written statement filed by the petitioner contain the list of

properties allotted to the defendants as well as to the plaintiff. According to the petitioner, the document is presently with a person by name Thiru.R.Santhanam, who is a resident of Vellore. Since the petitioner is not in possession of the said document, he filed a memo before the Trial Court to summon Thiru.R.Santhanam to produce the document dated 2 February 1997.

7. The witness list submitted by the petitioner does not contain the name of Thiru.R.Santhanam as a witness. There is no question of summoning a witness on the basis of a memo filed by a party to the litigation. There are provisions under the Code of Civil Procedure to summon a witness to give evidence or to direct him to produce a document. In the subject case, no such procedure was followed by the petitioner.

8. After hearing the learned counsel for the parties at length and on a perusal of the pleadings on record, I am of the view that liberty should be given to the petitioner to file a witness list to include the name of Thiru.R.Santhanam as a witness on his side. In case any such application is made, the same shall be allowed by the learned Trial Judge taking into account the memo filed by the petitioner and the averments in the written statement. The Trial Court shall issue summons to the witness to give evidence and to produce the document. The witness would be examined/

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cross examined by the concerned parties. In case the document dated 2 February 1997 is admitted and marked through the said witness, necessarily, opportunity should be given to the petitioner to reopen the side of the plaintiff for citing the attention of the plaintiff with respect to the document dated 2 February 1997.

9. The civil revision petition is disposed of with the above direction. No costs. Consequently, C.M.P.No.10188 of 2016 is closed.

09.11.2016

Index:Yes/no
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To
The Subordinate Judge, Ranipet.

C.R.P.(P.D.) No.1951 of 2016