

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 04.10.2016

CORAM

THE HONOURABLE MR.JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.2529 of 2016
and C.M.P.Nos.13030 & 14524 of 2016

P.Rajamani

... Petitioner

Vs.

1.J.Pushpa

2.J.Balaraman

Maduraimuthu (Died)
represented by his legal heirs

3.P.Govindan

4.Veerappan

5.Sundaram

6.Veerappan

S/o Late Maduraimuthu

7.Sudha

8.Vanitha

9.Viji

10.Subhash

... Respondents

Civil Revision Petition filed under Section 115 on the Civil Procedure Code against the fair and decretal order made in I.A.No.39 of 2016 in A.S.No.15 of 2011 dated 15.06.2016 on the file of the Subordinate Judge, Tambaram against order in O.S.No.404 of 2002 dated 23.09.2010 on the file of the Additional District Munsif Court, Alandur.

For Petitioner : Mrs.Bhavani Subbarayan
for M./s.K.V.Sanjeev Kumar

For Respondents : Dr.Xavier Arul Raj, Senior Counsel
for Mr.K.Govindaraj (R1 & R2)
R4, R6 - no appearance
R3, R5, R7 to R10 - given up
vide order dated 04.10.2016

ORDER

Challenging the fair and final order passed in I.A.No.39 of 2016 in A.S.No.15 of 2011 on the file of the Subordinate Court, Tambaram, the 1st defendant in the suit in O.S.No.404 of 2002 on the file of the Additional District Munsif Court, Alandur, has filed the above Civil Revision Petition.

2.The plaintiff filed the suit in O.S.No.404 of 2002 for permanent injunction.

3.After contest, the trial Court dismissed the suit, against which the plaintiff filed an appeal in A.S.No.15 of 2011. In the First Appeal, the plaintiff took out an application in I.A.No.315 of 2012 under Order 41 Rule 27 of the Civil Procedure Code to receive additional documents. After contest, the Lower Appellate Court allowed the application and received six additional documents and marked as Exs.A10 to A15. The defendants have not challenged the order passed in I.A.No.315 of 2012, which has become final. Subsequent to the reception of the additional documents, the plaintiff filed an application in I.A.No.39 of 2016 under Order 41 Rule 27 of

the Civil Procedure Code to issue subpoena to the Tahsildar, Sholinganallur for adducing evidence in respect of Exs.A10 to A15 and Exs.B2 to B4 to ascertain the truth and genuineness of those documents. The defendants filed their counter and contested the application.

4.As per the provisions of Order 41 Rule 28 of the Civil Procedure Code wherever additional evidence is allowed to be produced, the Appellate Court may either take such evidence, or direct the Court from whose decree the appeal is preferred, or any other Subordinate Court, to take such evidence and to send it when taken to the Appellate Court.

5.In the case on hand, the Lower Appellate Court had allowed the application in I.A.No.315 of 2012 and received the additional documents. In such circumstances, the provisions of Order 41 Rule 28 of the Civil Procedure Code is mandatory for proving the genuineness of the documents. Under Order 41 Rule 28 of the Civil Procedure Code, either the matter should be/ remanded to the trial Court for proving the document or the Lower Appellate Court itself can take evidence to prove the correctness of the documents. In the case on hand, the Lower Appellate Court, taking into consideration the age of the parties, allowed the application in I.A.No.39 of 2016 and issued subpoena to the Tahsildar, Sholinghur. When the provisions

of Order 41 Rule 28 of the Civil Procedure Code is clear that the additional documents produced by a party should be proved by adducing evidence, the order passed by the Lower Appellate Court allowing the application to issue subpoena to the Tahsildar is just and proper.

6.Dr.Xavier Arul Raj, learned senior counsel appearing for the respondents 1 & 2, in support of his contention relied upon a judgment reported in ***(2015) 1 Supreme Court Cases 466 [State of Orissa and another Vs. Fakir Charan Sethi (dead through legal representatives) and others]*** wherein the Hon'ble Supreme Court held as follows:

“17.The appellant State in its written statement before the learned trial court as well as in the appeal before the High Court had raised a specific plea of forgery and fabrication of the documents relied upon by the plaintiffs. The affidavits of the Tahsildar, Cuttack and Bhubaneswar Circle filed before the High Court specifically deal with the aforesaid issue. The appellant State had filed an application under Order 41 Rule 27 of the Code of Civil Procedure for leave to bring the same on record. The said application was rejected and all objections brushed aside by holding that the burden to prove the forgery alleged has not been satisfactorily discharged by the State. It is our considered view that the matter required a deeper probe and investigation and did not call for a summary rejection. That apart in *State of Orissa v. Harapriya Bisoi* [(2009) 12 SCC 378

: (2009) 4 SCC (Civ) 719] the issue with regard to validity of a Hatapatta similar to Ext. 1 was found to be the subject-matter of an ongoing criminal investigation. All these required the elimination of even the slightest of doubt with regard to the authenticity of the relied upon documents.”

The ratio laid down by the Hon'ble Apex Court squarely applies to the facts and circumstances of the present case.

7. In these circumstances, I do not find any reason to interfere with the order passed by the Lower Appellate Court. The Civil Revision Petition is devoid of merits and the same is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed.

8. The Subordinate Judge, Tambaram is directed to dispose of the appeal in A.S.No.15 of 2011, on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed.

Index : Yes/No
Internet : Yes
va

04.10.2016
(2/2)

M. DURAISWAMY, J.
va

To

- 1.The Subordinate Judge,
Tambaram.
- 2.The Additional District Munsif Court,
Alandur.

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