

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2016

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Civil Revision Petition (PD) No.2291 of 2012
and M.P.No.1 of 2012

A.Masilamani

.. Petitioner

Vs.

1.Mylathal

2.Madhanagopal

3.Chinnammal

4.Ayyammal

5.Kavitha

6.Arivukodi

.. Respondents

Revision filed under Article 227 of Constitution of India against the fair and decretal order in I.A.No.883 of 2011 in O.S.No.1583 of 1995 dated 18.1.2012 on the file of the II Additional District Munsif Court, Coimbatore.

For Petitioner : Mr.R.Bharath kumar

For Respondents : No Appearance

ORDER

This revision is directed against the order of the II Additional District Munsif, Coimbatore in I.A.No.883 of 2011 in O.S.No.1583 of 1995, dismissing the petition filed by the petitioner to send for documents, which were marked as Ex.B1 to B5 in O.S.No.683 of 1999 on the file of the same Court. The petitioner herein is the plaintiff in the suit.

2. The plaintiff has filed the suit for declaration and for permanent injunction. Denying the plaint averments, the first defendant has filed the written statement.

3. Pending suit, the plaintiff has filed I.A.No.883 of 2011 seeking an order to send for the documents marked as Exs.B1 to B5 in O.S.No.683 of 1999 on the file II Additional District Munsif Court, Coimbatore.

4. Resisting I.A.No.883 of 2011, the defendants filed counter stating that in order to drag on the trial of suit, the petition has been filed. It is averred that the petitioner can very well get the certified copies of the entire records from O.S.No.683 of 1999 and produce it.

The petitioner cannot shift the responsibility of proving his evidence upon the Court by directing the Court to send for the records and verify it. The petitioner has to prove the connectivity or necessity of the said documents to that of the present suit with proper and sufficient reason and prays for dismissal of the petition.

5. Considering both side cases, the trial Court dismissed the petition on the ground that there is no averment in the affidavit that the petitioner has taken steps for getting certified copies of the documents as alleged by the respondents.

6. Aggrieved by the order of the trial Court, the petitioner has filed the present revision.

7. Learned counsel for the petitioner submits that the trial Court failed to consider that the documents sought to be send for are essential for proving the case by the plaintiff and the same should not be refused. He submits that the relief sought for in I.A.No.883 of 2011 squarely falls within the ambit of Order 13, Rule 10 C.P.C. He would submit that the trial Court failed to see that Exs.B1 to B5 marked in O.S.No.683 of 1999 are primary evidence and if the plaintiff applies for

certified copies of the same that could be only secondary evidence. As per the provisions of the Indian Evidence Act, the plaintiff has to prove his case by letting in primary evidence and only in the absence of primary evidence, the secondary evidence is admissible in law. He finally submits that getting the certified copies from the other records will take much time and therefore, for speedy disposal of the suit, the plaintiff has filed the petition to send for documents.

8. Despite service, the respondents have not entered appearance.

9. I heard Mr.R.Bharath Kumar, learned counsel for the petitioner and perused the materials available on record.

10. From the counter affidavit by the respondents in I.A.No.883 of 2011, it is seen that the suit is pending for further examination of plaintiff's side witnesses and at that stage, the petitioner has filed petition under Order 13, Rule 10 C.P.C. to send for Exs.B1 to B5 marked in O.S.No.683 of 1999 pending on the file of the same Court.

11. The trial Court dismissed the petition mainly on the ground

that there is no averment in the petition that the petitioner has taken steps for getting the certified copies of the documents and in the absence of any such averment, the petition is not maintainable. The said approach of the trial Court is not sustainable for the reason that if bringing on record a document is essential for proving the case by a party, the Court should not refuse such prayer.

12. The Order 13 Rule 10 CPC states as follows:

"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 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.”

13. It is well settled that Order 13, Rule 10 C.P.C. empowers the Court to send papers from its own records or from other Courts. Therefore, the power conferred under Order 13, Rule 10 CPC is wide enough to call for the records not only from the Civil Court, but also from a Criminal Court as the expression used under Rule 10 of C.P.C. is from any other Court.

14. There is much force in the arguments of the learned counsel for petitioner that obtaining of certified copies of documents from the other records will take much time and it is the bounden duty of the plaintiff to prove his case by letting in primary evidence and also only in the absence of primary evidence, the secondary evidence is admissible in law. If the documents required by the petitioner are brought on record in the suit on hand, no prejudice would be caused to the respondents.

15. The trial Court has failed to consider the petition to send for documents in proper manner and the reasoning given for dismissal is unsustainable. When it appears to the High Court that in exercise of

the jurisdiction, the trial Court has acted unreasonably or has ignored the relevant provisions, the High Court would certainly interfere with the exercise of discretion of the trial Court.

16. As stated supra, if bringing on record a document is essential for proving the case by a party, ordinarily the same should be not refused by the Court. Therefore, in the interest of justice and in order to give a chance to the petitioner to prove his case, the petition filed by the petitioner to send for documents from of O.S.No.683 of 1999 on the file of II Additional District Munsif Court, Coimbatore is liable to be allowed.

17. In the result:

(a) the Civil Revision Petition is allowed by setting aside the order in I.A.No.883 of 2011 in O.S.No.1583 of 1995, dated 18.01.2012, on the file of the learned II Additional District Munsif Court, Coimbatore;

(b) the trial Court is directed to send for the document as sought for in I.A.No.883 of 2011 and complete the proceedings within a period of two months

from the date of receipt of a copy of this order;

(c) on receipt of the documents as sought for in I.A.No.883 of 2011, the trial Court is directed to complete the trial proceedings in O.S.No.1583 of 1995 within a period of three months thereafter, without giving any adjournments to either parties, since the suit is for the year 1995. No costs. Consequently, M.P.No.1 of 2012 is closed.

19.12.2016

Note: Issue order copy on 13.02.2018

vs

Index : Yes

Internet : Yes

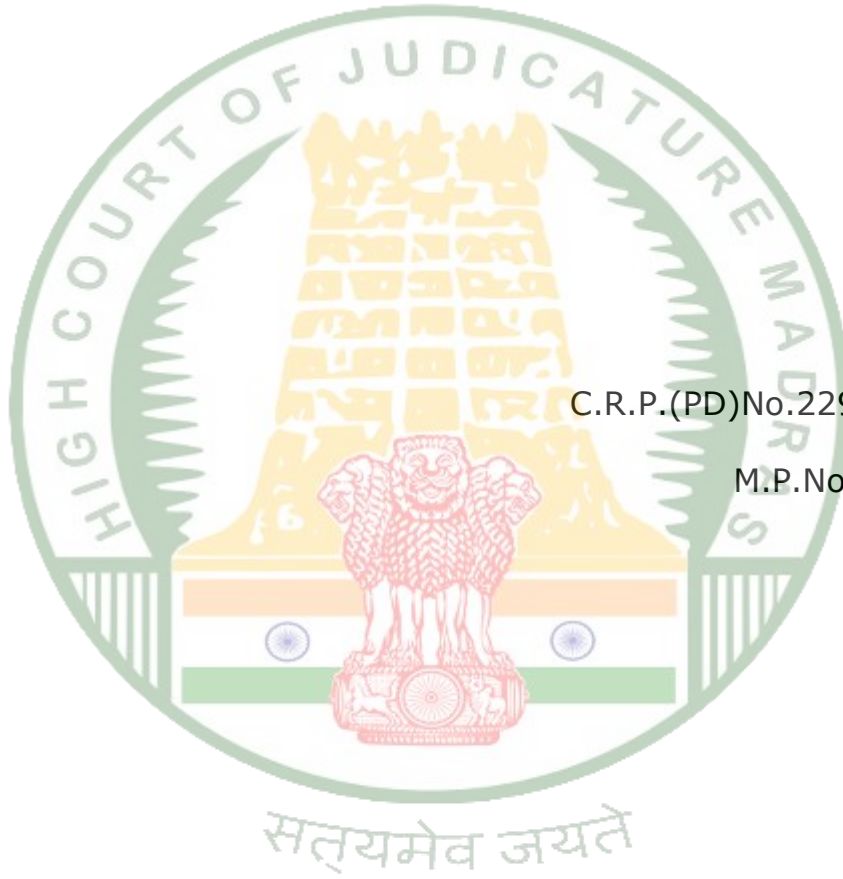
To

The II Additional District Munsif,
Coimbatore.

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M.V.MURALIDARAN,J.

VS



C.R.P.(PD)No.2291 of 2012
and
M.P.No.1 of 2012

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