

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.11.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(PD)No.2459 of 2012

Noorjahan

.. Petitioner

Vs.

K.Senthamarai

..Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Decreetal order passed in I.A.No.1018 of 2010 dated 22.08.2011 in O.S.No.35 of 2003, pending on the file of the District Munsif, Chengalpattu and prays to set aside the said order.

For Petitioner : Mr.P.Subramanian

For Respondent : Mr.V.Raghavachari

ORDER

The case of the revision petitioner is that she is the defendant in the suit. The suit 'B' Schedule property is the absolute property of the revision petitioner and 'A' schedule property abutting the eastern

boundary of 'B' Schedule property belonged to the respondent/plaintiff. The respondent herein despite having no right or interest over the 'B' Schedule has filed the above suit in O.S.No. 35 of 2003 on the file of the District Munsif Court, Chengalpattu, Kanchepuram District, as if his ingress and egress in 'A' schedule property stand affected and thereby prayed for removal of superstructure put up by this revision petitioner. The revision petitioner hence filed her written statement and praying for dismissal of the above suit. The said suit has been posted for the cross examination of the Defendant Witness DW1, the husband of the revision petitioner herein.

2.At the time of filing written statement, some vital documents in favour of the revision petitioner was not filed inadvertently besides oversight of the revision petitioner. Wherefore the revision petitioner has filed a petition in I.A.No.1018 of 2010 under Order VIII Rule 1(A) R/W Section 151 of CPC, to condone the delay caused in filing such documents and receive the documents, whereby enabling her to mark those documents through her husband, D.W.1. Misfortunately the Learned Trial judge erroneously dismissed the above application by holding that the documents sought to be received by the revision petitioner was already been received and marked in the same Court and all the issues pertaining to the documents was decided in an

earlier suit in O.S.No.726 of 1994 viz. the suit filed by this revision petitioner against the respondent herein for declaration and permanent injunction in respect of the same 'B' schedule property. The said suit in O.S.No.726 of 1994 on the file of the District Munsif Court, Chengalpattu filed by the revision petitioner against the respondent herein came to be dismissed. Aggrieved over the same, the revision petitioner preferred appeal before the Subordinate Court, along with delay condonation petition to condone the delay caused therein in filing the said appeal. However, the delay was not condoned and the application for condoning delay was not allowed by the Appellate Court. Whereupon the petition under Order VIII Rule 1(A) R/W Section 151 of CPC, to condone the delay caused in filing such documents in I.A.No.1018 of 2010 was disallowed by the Trial Court vide order dated 22.08.2011, challenging the same the petitioner herein has come up with the present Civil Revision Petition.

3.I heard Mr.P.Subramanian, learned counsel appearing for the petitioner and Mr.V.Raghavachari, learned counsel appearing for the respondent.

4.The learned counsel for the revision petitioner submitted that neither the dismissal of the above appeal nor marking and discussion

by the trial Court on the documents in an earlier suit, can have any impact on the latter suit. Those are the documents indispensable for the revision petitioner to prove his case. The trial Court erred by referring to the earlier suit for declaration and permanent injunction filed by the revision petitioner in O.S.No.726 of 1994. The trial Court ought to have received the documents produced by the revision petitioner, since the trial Court has all power to condone such delay in filing the document, vested under Section 30 of CPC, that the Courts are vested powers and responsibility to issue necessary orders from time to time, interalia directing the parties to produce or give evidence. Section 30 of the Code of Civil Procedure states as follows:-

"30.Power to order discovery and the like.-

Subject to such conditions and limitations as may be prescribed, the Court may, at any time, either of its own motion or on the application of any party,-

(a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;

(b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;

(c) order any fact to be proved by affidavit.”

5. In this regard the counsel for revision petitioner relied upon the decision of the Hon’ble Gauhati High Court, reported in **AIR 2016 Gauhati 62** in **Monowar Hussain v. Manoranjan Das**, held that

“5. Coming to the merit of the impugned order it appears that learned trial court refused to grant leave only because of the fact that the defendant did not file the same along with written statement or at the stage of filing document and that the ground mentioned in the application was not satisfactory. The learned court has not considered as to what was the ground taken in the application. The learned court has also not considered as to whether the document is necessary for arriving at a just decision in the suit. This is important because under section 30 of the Code of Civil Procedure courts are vested with power and responsibility to issue necessary order from time to time, inter alia, directing parties to produce or give evidence in regard to

materials which are necessary for arriving at truth. In a catena of decision the Hon'ble Supreme Court deprecated the actions of the learned courts below for not taking recourse to the provision of Section 30 at the time of admitting documents into record or at the time of trial. After all, the litigation is nothing but a journey towards truth and a court is required to take appropriate steps to thrash out the underlying truth in a dispute raised between two parties. Observations made by the Hon'ble Supreme Court in the case of Page 5 of 5 CRP(I/O) 80/2015 Maria Margarida Sequeria Fernandes and Ors. vs. Erasmo Jack de Sequeria (Dead) through L.Rs. reported in (2012) 5 SCC 370 may be referred in this regard.

6. Upon perusal of the written statement it appears that the documents sought to have been brought on record by the defendants was mentioned in paragraph 9 of the written statement and so even if the document is brought on record, it cannot be said that the defendant has sought to set up a new case or that the document would be beyond pleading. On the other hand, these documents may be relevant for the purpose of deciding

the claim of the plaintiff over the suit land. Considering the facts and circumstances, it does not appear that registered sale deed No. 212 dated 03.02.1997 would not be necessary for proper adjudication of the matter in dispute. Once a doubt arises that a document may be necessary for deciding a lis between the parties, it is always safe to allow the document to be brought on record and thereafter arrive at a decision on merit. In view of the observations made by the Hon'ble Supreme Court in the case of Maria Margarida (supra), the impugned order passed by the learned trial court does not appear to be proper and correct. Accordingly, the revision petition stands allowed. The learned trial court is directed to permit the defendant to produce the registered sale deed No. 212 dated 03.02.1997 and thereupon to decide the suit in accordance with law."

6. Further the Learned counsel for the revision petitioner relied upon the decision of Andhra Pradesh High Court in the matter of ***Dugapatti Sudhakar Reddy v. Avulpati Shankar Reddy & Ors.*** reported in **2005 (2) ALT 417** and emphasized that by the virtue of Order VIII Rule 1(A) read with Section 151 of CPC, the defendant is

entitled to produce such documents with the leave of the Court and the same may be received in evidence. It is to be noted that in the said case a document which was under a deceased person was traced later while on search of the belongings of the deceased and the petitioner therein was unaware and was not in possession of the same while filing the Written statement.

7.Per contra, the Learned counsel for the respondent submitted that the trial Court rightly dismissed the revision petitioner's application having found that the documents put forth by the petitioner was already marked and after considering and discussing those documents, has negated its reliability. Further in so far as the 'B' Schedule property is concerned proper issues were framed in O.S.No.726 of 1994 and the petitioner's claim over the 'B' Scheduled property was rejected on having basis upon the very same documents sought to be filed. When both suit as well as appeal preferred by the revision petitioner claiming right over the 'B' Schedule property stands dismissed, the revision petitioner cannot have any legitimate right to rely on same documents. Further the petition is also being filed at a belated stage without valid reason.

8.At this juncture, it would be relevant to take note of Order

VIII Rule 1, envisaging that it is incumbent upon the defendant to produce such document, which is the basis for his defense and the same shall be filed along with written statement.

9. Further Order VIII Rule 1(A) contemplates that "A document which ought to be produced in Court by the defendant under the rule, but is not produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit". Thus it is patent that it is for the Court to grant leave to receive such documents filed belatedly and the same shall be done by the Court only after taking account of the facts and circumstances cases. In the case on hand the trial Court has found that the documents now sought to be produced by the revision petitioner was already been received.

10. After dealing with all the documents put forth by the revision petitioner and having elaborately discussed and on due consideration of the document, the suit came to be dismissed by the trial Court and thereby the trial Court negated the case of the revision petitioner on the basis of very documents. That apart the records disclose that the Revision petitioner herein has filed his written statement in the above suit on 13.02.2004, whereas after about 6 years i.e in the year 2010

he has come up with the above petition under Order VIII Rule 1(A) read with Section 151 of CPC, to condone the delay caused in filing such documents. Moreover the reason stated for non filing of the above documents in time is that due to oversight and got the certified copies only by the time of filing the above Interlocutory application. It is noteworthy that revision petitioner has cautiously not mentioned in the affidavit how much, such delay is.

11.It is to be noted the Plaint is filed on 20.02.2003 and the Written statement was filed on 13.02.2004. Thereafter necessary issues framed, trial commenced. It is admitted by the revision petitioner himself that plaintiff side evidence closed and when the suit is posted for Defendant side witness, the petitioner has come up with the above petition under Order VIII Rule 1(A) read with Section 151 of CPC on 29.06.2010.

12.Order VIII Rule 1(A) read with Section 151 of CPC states as follows:

“[1-A.Duty of defendant to produce documents upon which relief is claimed or relied upon by him.-

(1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set-off or

counter-claim, he shall enter such document in a list, and shall, at the same time, delivery the document and a copy thereof, to be filed with the written statement.

(2) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

[(3) A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.]

(4) Nothing in this rule shall apply to documents-

(a) produced for the cross-examination of the plaintiff's witnesses, or

(b) handed over to a witness merely to refresh his memory.]

Section 151. Saving of inherent powers of Court.-

Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."

13.It is settled law that delay caused in filing any application should be necessarily explained with sufficient cause and the Court shall condone such delay, only on satisfying with the reasons thereon.

As a matter of routine or without any sufficient cause it will be improper to the Court to condone such delay that too in respect of a case already dealt. Moreover if such petitions without convincing reasons are allowed taking a liberal and lenient view, the very purpose of Amendment of CPC, contemplating the leave of Court for a petition under Order VIII Rule 1(A) read with Section 151 of CPC will be defeated.

14.For the foregoing reasons, I do not find any material irregularity or error in the impugned order made in I.A.No.1018 of 2010 in O.S.No.35 of 2003, dated 22.08.2011, by the learned District Munsif Court, Chengalpattu, Kanchepuram District. Accordingly it does not warrant any interference.

15.In the result, this Civil Revision Petition is dismissed. No costs.

28.11.2016

Note:Issue order copy on 26.04.2017

Internet:Yes

Index:Yes

vs

To

The District Munsif,

Chengalpattu.

M.V.MURALIDARAN, J.

VS

**Pre-Delivery order made in
CRP(PD)No.2459 of 2012**

28.11.2016

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