

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2016

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THE HONOURABLE **MR.JUSTICE C.T.SELVAM**

CRP.PD.No.2885 to 2887 of 2013
MP.No.1 of 2013

Venkatesan

.. Petitioner in all the revisions

Vs

1.Ammaniammal
2.Kamalasekar @ Madheswaran
3.Parameswari
4.Paramasivam
5.Suganeswari
6.Sathya
7.Minor Rajavel

.. Respondents in all the revisions

PRAYER : This Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order made in IA.Nos.58 to 60 of 2013 in OS.No.49 of 2012 on the file of the Principal District and Sessions Judge, Namakkal dated 11.06.2013.

For Petitioner : Mr.S.Kalyanaraman
For respondents : Mr.D.Sivhakumaran
for respondents 1, 2, 4 to 7.
No appearance for R3.

COMMON ORDER

Revision Petitioner/plaintiff in OS.No.49 of 2012 on the file of Principal District and Sessions Court, Namakkal, filed suit for specific performance with a prayer for alternative relief. Petitioner has moved three applications in IA.Nos.58 to 60 of 2013 seeking reliefs

reopening, recall of witness and marking of documents. On dismissal of such applications, petitioner is before this Court with the present revision petitions.

2. Heard both sides.

3. Order of the Court below is erroneous. Documents sought to be marked have been produced for the first time in the course of cross examination of DW1 i.e, production of the documents in keeping with Order 7 Rule 14 has been withheld towards confrontation of the defendant/defendants witness with it. In such circumstances, the court below, on the defendants witness failing to accept the same, ought to have allowed the applications.

4. Order 7 Rule 14 of CPC reads as follows :-

14. Production of document on which plaintiff sues or relies - (1) The plaintiff shall endorse on the plaint or annex thereto a list of documents required to be produced or disclosed as hereinafter provided in this rule.

(2) Where the plaintiff sues upon a document in his possession or power, he shall produce it in Court when the plaint is presented, and shall at the same time deliver

the document or a copy thereof to be filed with the plaint.

(3)Where the plaintiff relies on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in the list above referred to showing separately which of the documents are in his possession or power and which are not, which of the documents in his possession or power he has produced with the plaint and which are not so produced. In regard to any such documents which are not produced, the list shall contain a statement of the reason for their non production and the steps which the plaintiff has taken or will take to produce them or cause their production.

5.Order 8 Rule 1-A of CPC reads 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 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 produce it in

Court when the written statement is presented by him and shall, at the same time, deliver 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.

6.The Hon'ble Supreme Court in **Salem Advocate Bar Association Tamil Nadu V. Union of India reported in AIR 2005 SC (3353)** held thus in paragraphs 36 and 37 :-

"36.In the aforesaid Rule, it is evident that the words plaintiff's witnesses have been mentioned as a result of mistake seems to have been committed by the

Legislature. The words ought to be 'defendant's witnesses'. There is a similar provision in Order VII Rule 1A(4) which applies to a defendant. It reads as under;-

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

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

37. Order VII relates to the production of documents by the plaintiff whereas Order Vii relates to production of documents by the defendant. Under Order VIII, Rule 1A(4) a document not produced by defendant can be confronted to the plaintiff's witness during cross-examination. Similarly, the plaintiff can also confront the defendant's witnesses with a document during cross-examination. By mistake, instead of "defendant's witnesses", the words "plaintiff's witnesses" have been mentioned in Order VII, Rule (4). To avoid any confusion, we direct that till the Legislature corrects the mistake, the words "plaintiff's witnesses" would be read as "defendant's witnesses" in Order VII, Rule 4. We, however, hope that the mistake would be expeditiously

corrected by the Legislature.”

7.The civil revision stands allowed and the order of dismissal passed by the court below in IA.Nos.58 to 60 of 2013 in OS.No.49 of 2012 on the file of the Principal District and Sessions Judge, Namakkal, dated 11.06.2013 are set aside. Such IA's shall now stand allowed. No costs. Consequently, connected miscellaneous petition is closed.

02.08.2016.

Index: Yes / No
Internet:Yes / No
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To
The Principal District and Sessions Judge, Namakkal.

C.T.SELVAM., J.
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