



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.08.2016

CORAM :

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P. (MD) No.1594 of 2016
and
C.M.P. (MD) No.7780 of 2016

Muthuselvi ...Petitioner/Respondent/Respondent

Vs.

Muthukrishnan ... Respondent/Petitioner/Petitioner

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the petition and order dated 21.07.2016 passed I.A.No.12 of 2016 in H.M.O.P.No.235 of 2013 on the file of Additional Sub Court, Tirunelveli.

For Petitioner : Mr.R.J.Karthick
For Respondent : Mr.T.S.R.Venkatramana
for Mr.M.Balakrishnan

O R D E R

This revision arose out of the order passed by Sub Court, Tirunelveli in I.A.No.12 of 2016 in H.M.O.P.No.235 of 2013.

2. The respondent filed H.M.O.P.No.235 of 2013 against the petitioner for dissolution of the marriage held on 22.08.1999. The same is being contested by the petitioner filing a counter dated 30.06.2016.

3. While so, the respondent filed an application I.A.No.12 of 2016 seeking permission to receive the documents annexed in the petition. According to him, the documents are vital, which were left out earlier. The application was resisted by the petitioner by filing a counter stating that this application was filed belatedly only to deprive the petitioner from filing proper counter after perusal of the documents. Though the documents 1 to 10 would be permitted to be marked, she was having objection for marking other documents. The learned Sub Judge allowed the application. Aggrieved over the order, the present revision is filed.



4. Heard Mr.R.J.Krthick, learned counsel for the petitioner and Mr.T.S.R.Venkatramana, learned counsel appearing for the respondent and perused the materials available on record.

5. It is contended by the learned counsel for the petitioner that the respondent has not explained nor given reasons for filing the documents after commencing of the trial and unless proper explanation has been given, the petition filed under Order 7 Rule 14 C.P.C cannot be allowed. The trial court exceeded its jurisdiction in allowing the application to mark the documents relating to third parties. The learned counsel has relied upon the decisions of this Court in **S.Rathinaswamy Vs. S.Bhanumathi (2006 (3) MLJ 593)** and unreported judgment in **Vasanthi and four others Vs. N.S.Palanisamy S/o Silamaba Gounder in CRP(PD) No. 136 of 2009** in support of his contentions.

6. In **2006(3) MLJ 593**, this Court held that power is conferred upon the court to receive documents in genuine cases on showing of good cause to the satisfaction of the court for non-production of the documents at the earlier stage. In that case, the High Court has eventually allowed the application filed under Order 7 Rule 14 C.P.C. The relevant paragraphs in that judgment is extracted hereunder:

18. The main object of Order 7, Rule 14(3), C.P.C., conferring the power upon the Court to receive the documents in genuine cases is to receive the documents if good cause is shown to the satisfaction of the Court for the non-production of the documents at the earlier stage. The Courts are expected to receive the documents and give an opportunity to the parties. The Revenue Records like Village Plan and Survey Numbers which were not within the knowledge of the Plaintiffs and whose authenticity cannot be doubted are to be received and the Court may grant permission to receive those documents. Case of the Plaintiffs is that there is no other Cremation Ground in Thenkarai Velankudi Village. Hence, the Village Plan is a document of vital importance. That document stated to be not traceable earlier. Permission may not be withheld due to the delay in production. Similarly, the Survey Plans relating to the S.Nos.1, 15 and 16 are Public Documents, which are to be received in evidence to afford an opportunity to the Plaintiffs. The reason stated by the Plaintiffs that those plans were not traceable is genuine reason. In the circumstances of the case, this Court is of the view that the Trial Court ought to have exercised its discretion under Order 7, Rule 14(3), C.P.C. allowing



the Plaintiff to produce the documents. The Court below has not taken note of the fact that the documents produced are the public documents/Revenue Records and the reasons stated by the Plaintiffs is that the Survey Plans were earlier not traceable.

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20. In the case in hand, we are not concerned with any amendment of Pleading. The Trial has commenced after coming into force of the C.P.C (Amendment) Act, 2002. Certainly, the provisions of C.P.C. (Amendment) Act 2002 would apply. However, for the reasons stated by the Plaintiffs in the supporting affidavit filed under Order 7, Rule 14(3), C.P.C, that the documents were not earlier traceable and that the Village Plan and the Survey Plan are public documents, this Court is of the view that the Court below ought to have permitted the Plaintiffs to produce the documents exercising its discretion under Order 7, Rule 14(3), C.P.C. The Impugned Orders in LA. Nos. 27 to 29 of 2003 declining to reopen the case, recall P.W.2 and to mark the documents cannot be sustained and the Applications are to be allowed.

7. In C.R.P. (PD) No.136 of 2009 dated 16.07.2009, an attempt was made by the parties to mark the deposition given by a witness in a criminal court. An objection was raised that the evidence of a living person cannot be marked in a judicial proceeding, unless the attention of the witness was drawn to the particular evidence recorded in the earlier proceedings. Overruling the objection, the trial court allowed the petition. In the above facts, this Court has held as follows:

10. The dispute in the present matter relates to a Will. It was the case of the respondent that in a previous criminal proceeding the first revision petitioner has admitted the execution of Will which was denied subsequently in her statement. Therefore, it was only to contradict the evidence of the first petitioner, the respondent proposed to use her evidence given earlier in the criminal proceeding. However, the fact remains that the first petitioner was not examined as a witness. Even before examining her as a witness on the side of the petitioners/defendants the respondent has taken steps to mark her deposition as exhibit by recalling P.W.1. The proper course would be to cross-examine the first petitioner on the basis of her previous statement given in a judicial proceeding and to cite her attention to the relevant portion of her evidence. It is always possible for the parties to put such questions even in the form of question and answer. Therefore, I am of the view that the course adopted by the learned trial judge in marking the deposition of



the petitioner in an earlier criminal proceeding has no sanction of law. Therefore, the order impugned in this Civil Revision Petition is liable to be set aside.

8. In the instant case, the respondent has filed the divorce petition against the petitioner on the ground of cruelty and in order to establish his case, he wanted to mark the certified copies of the First Information Report in Crime No. 828 of 2013 and other relevant documents from i.e Domestic Violence Act Cases, Civil Proceedings, Writ Proceedings. The trial court allowed the application permitting him to produce the documents observing that the petitioner will be given opportunity at the time of marking documents in the interest of justice.

9. In the affidavit filed in support of the application, the respondent has categorically stated that at the time of filing of the divorce petition, he produced only Marriage Registration Certificate and only after filing of the counter, he thought that the documents sought to be produced are vital to prove his case. Therefore, the contention of the petitioner that the respondent has not given any reason for filing this application belatedly cannot be accepted. Even in the first judgment relied on by the learned counsel for the petitioner, this Court held that if good cause is shown, the court may grant permission to receive the documents exercising its discretion under Order 11 Rule 14 CPC.

10. In second decision cited by the learned counsel for the petitioner, an application was filed to recall P.W.1 for the purpose of marking a document., which is stated to be the deposition of another person given in a criminal proceeding. Since the application was allowed this Court held that the course adopted by the trial court in marking the deposition of another person in the earlier criminal proceedings have no sanction of law. In my considered view, the decision has no application to the facts of this case.

11. In the instant case, the observations made in the impugned order protects the interest of the petitioner. Therefore, I do not find any illegality or perversity in the order impugned in this revision. Hence, this petition is dismissed. No costs. Consequently, connected C.M.P.(MD) No.7780 of 2016 is also dismissed.

Sd/-

Assistant Registrar(CS II)

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To,
The Additional Subordinate Judge, Tirunelveli.

+1cc to Mr.R.J.Karthik, Advocate SR.No.44703

+1cc to Mr.M.BalaKrishnan, Advocate SR.No.44653

cm

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