

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2017

CORAM :

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

Civil Revision Petition (PD) Nos.2993 to 2995 of 2013

and
M.P.No.1 of 2013

1.Baggyam
2.Pasupathy
3.Vanaja
4.S.Devi
5.Kariyan

.. Petitioners

Vs.

1.M.Mangai
2.M.Tamilselvan

.. Respondents

Revisions filed under Article 227 of Constitution of India against the fair and decretal order dated 17.4.2013 made in I.A.Nos.70, 71 & 83 of 2013 in O.S.No.55 of 2012 on the file of Principal District Judge, Krishnagiri.

For Petitioners : Mr.V.Nicholas

For Respondents : M/s.N.Sureka

COMMON ORDER

These revisions are directed against the order dated 17.04.2013 made in I.A.Nos.70, 71 and 83 of 2013 in O.S.No.55 of 2012 on the file of the Principal District Court, Krishnagiri. The petitioners are the

defendants in the suit.

2. Since, these Civil Revision Petitions arising out of the same suit, all three were taken up together, heard and disposed of by this common order.

3. The plaintiffs have filed the suit for declaration to declare the title of the suit properties; to declare that the sale deeds dated 05.06.2012 executed by the defendants 1 and 2 in favour of the defendants 3 to 5 as null and void and also consequential injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property and also from alienating the suit properties to the third parties. Resisting the suit, the defendants have filed the written statement.

4. The trial was commenced and evidences of plaintiffs and the defendants were concluded. When the suit was posted for arguments, the plaintiffs have filed petitions being I.A.Nos.70, 71 and 83 of 2012 to re-open the case of the plaintiffs, recall PW1 and receive certain documents.

5. Resisting all three petitions, the defendants filed counter stating that after hearing the arguments on the side of the defendants, the plaintiffs have filed these petitions with the object to file some documents and give further evidence and the same is nothing but commencing denovo trial.

6. Upon consideration of the rival submissions, the trial Court allowed the petitions. Aggrieved by the same, the defendants have filed these Civil Revision Petitions.

7.I heard Mr.V.Nicholas, learned counsel for the petitioners and M/s.N.Sureka, learned counsel for the respondents and perused the entire records.

8. The learned counsel for the petitioners submitted that the trial Court failed to see that the suit has been filed in the year 2012, whereas the documents to be received in evidence are related to the years 1972, 1988, 1993 and 1994 and should have been with the plaintiffs, but they failed to produce the same at the time of trial. He submitted that the reasons given by the plaintiffs for not producing the documents were invented for the purpose of filing petitions. He would

submit that in order to overcome the lacuna in the plaint and in the evidence, petitions for re-open, recall and to receive documents were filed after the completion of the trial and the arguments of both sides were advanced.

9. The learned counsel for the respondent submitted the documents to be received in evidence were not available with the plaintiffs when the plaintiffs' side witnesses were examined. In order to prove that the second plaintiff is the son of Maran, it is necessary to receive the documents filed along with the petitions. Therefore, the trial Court has rightly allowed the petitions to re-open, recall and receive documents.

10. The point arises for consideration is whether the trial Court was right in allowing the petitions.

11. From the materials available on record, it is seen that in a suit for declaration and injunction of the year 2012, trial was completed and the suit was posted for arguments on 21.02.2013, 26.02.2013 and 06.03.2013. While so, the plaintiffs have filed three petitions for reopening, recalling PW1 and for receiving the documents

in evidence.

12. The documents sought to be marked are nativity certificate, Higher Secondary mark sheet, SSLC mark sheet, community certificate and College Transfer Certificate of the second plaintiff; patta book; copy of sale deed dated 12.12.1972 and the order passed in M.C.O.P.No.1356 of 1992 on the file of Sub-Court, Dharmapuri. In order to prove that the second plaintiff is the son of the deceased Marrappa Gounder, the plaintiffs have filed those documents. For such purpose, the other petitions to reopen and recall were filed.

13. It would be relevant to refer to the written statement filed by the defendants, wherein in paragraph 9, it has been stated that the second plaintiff is not the son of Marappa Gounder. It is pertinent to note that the averments in the affidavit filed in support of the petitions are very vague. No reason has been set out as to why the plaintiffs have not filed those documents earlier.

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14. In the order under revisions, the trial Court observed that in order to arrive at a decision in the suit, Court can receive the documents and examine witnesses. It was also observed that mere

receipt of documents would not amount that the recitals in the documents were accepted and it has to be proved by way of marking and the defendants have every opportunity to cross-examine the witness. The trial Court further observed that the documents to be received in evidence were issued prior to the filing of the suit. Though the defendants in their written statement and DW1 stated that the second plaintiff is not the son of Marappa Gounder, it is the bounden duty of the plaintiffs to prove that the second plaintiff is the son of Marappa Gounder. The trial Court further observed that the documents are relevant to the suit and therefore, the case of the plaintiffs side has to be reopened and for the purpose of marking of documents, PW1 has to be recalled.

15. It is to be noted that Order 18, Rule 17 CPC is an equitable relief. The same cannot be invoked for the sake of argument.

16. The Hon'ble Apex Court as well as this Court, time and again, held that the power to recall any witness under the aforesaid provision can be exercised by the Court either in its own motion or an application filed by any parties to the suit. But such power is to be invoked not to fill up the lacunae in the evidence of the witness which

has already been recorded but to clear any ambiguity that may have arisen during the course of his examination and the same should be sparingly used in appropriate cases.

17. When a party makes an application under Order 18, Rule 17 CPC, it is ultimately within the Court's discretion, if it deems fit, to allow such an application. In the present case, no such case has been made out. It is clear that the documents sought to be received in evidence are very much available with the plaintiffs even prior to examination of PW1 and what prevented them from filing these documents earlier. No convincing reason has been stated in the affidavit in support of the petitions. It is also clear that the those petitions have been filed only with a view to fill up the lacunae found at the time of recording evidence and the same cannot be entertained.

18. It is pertinent to note that the trial in a case has to be continuous followed by the argument without any gap. But in this case, the trial was completed and the suit was posted for arguments on 21.02.2013, 26.02.2013 and 06.03.2013. The trial Court has also recorded the said fact in its order. According to the defendants, the arguments were commenced in the suit. The said fact has not been

denied by the plaintiffs. Therefore, besides delay, when there is no pleading, it is settled that no amount of evidence can be admitted without pleading.

19. There is no acceptable reason or cause which has been shown by the plaintiffs as to why these documents were not placed on record by the plaintiffs during the entire trial. Unfortunately, the trial Court, taking note of the submission of the plaintiffs that the documents are dated prior to the filing of the suit and also the plaintiffs are entitled to file their documents and examine witnesses till a decision is taken in the suit, allowed those applications. The aforesaid findings arrived at by the trial Court, in my view, is perverse.

20. In the light of the submissions made by the defendants, namely, those documents were very well available throughout the trial, I am of the view that even by exercise of Section 151 CPC, the plaintiffs cannot be permitted. During the entire trial, those documents have remained in exclusive possession of the plaintiffs, but for the reasons known to them, they have not filed earlier. The trial Court was not right in allowing all three petitions. Therefore, the order of the trial Court is liable to be set aside.

21.In the result:

(a) All the three Civil Revision Petitions are allowed, by setting aside the order passed in I.A.Nos.70, 71 and 83 of 2013 in O.S.No.55 of 2012 respectively dated 17.4.2013, on the file of the Principal District Judge, Krishnagiri;

(b) The trial Court namely the Principal District Judge, Krishnagiri is hereby directed to dispose of the suit within a period of three months from the date of receipt of a copy of this order, on day today basis without giving any adjournment to either parties;

(c) Both the parties are hereby directed to give their fullest co-operation for early disposal of the suit. No costs. Consequently, connected miscellaneous petition is closed.

23.02.2017

Note:Issue order copy on 09.04.2018

vs

Index : Yes

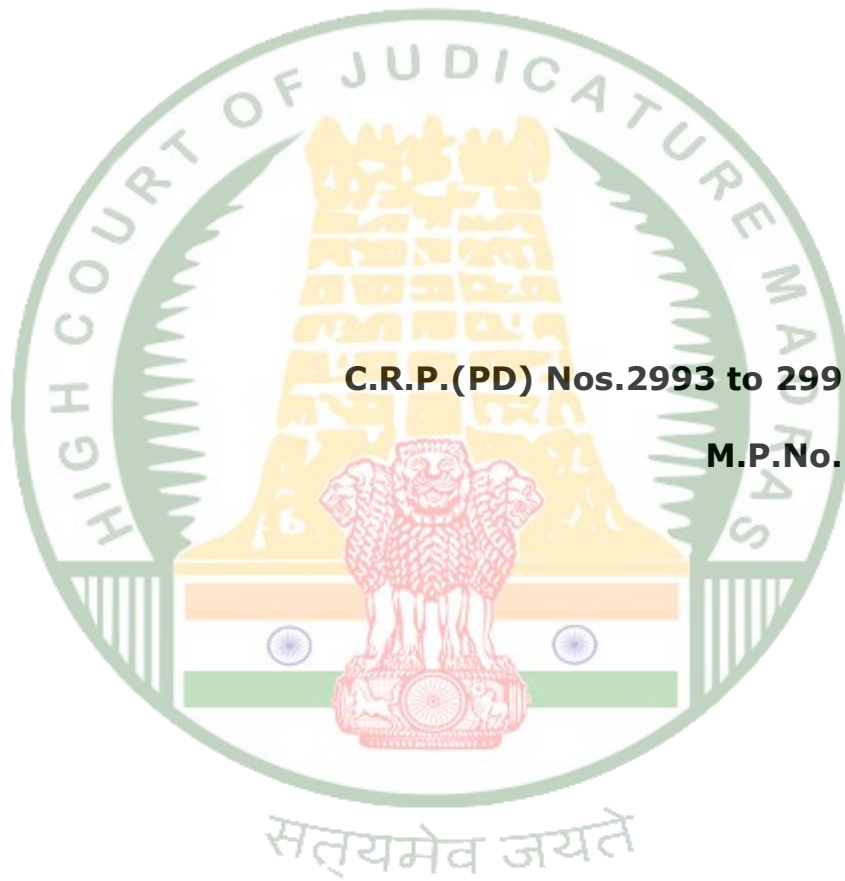
Internet : Yes

To

The Principal District Judge,
Krishnagiri.

M.V.MURALIDARAN,J.

VS



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