

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2017

CORAM

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

C.R.P. (PD) No.2870 of 2012

and

M.P.No.1 of 2012

K.Sumathy

.. Petitioner

vs

1.K.Chandrasekar

2.C.Senthilkumar

3.C.Vaitheeswaran

4.M.Pandurangan

.. Respondents

Revision filed under Article 227 of Constitution of India against the order passed in I.A.No.591 of 2011 in O.S.No.66 of 2009 dated 10.2.2012 on the file of the Principal Sub Judge, Villupuram.

For Petitioner : Mr.N.Suresh

For Respondents : R1 to R3 - Givenup

No Appearance for R4

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ORDER

This revision is directed against the order of the Principal Sub Judge, Villupuram in I.A.No.591 of 2011 in O.S.No.66 of 2009, dated

10.02.2012, dismissing the application filed under Or.7, Rule XIV(3) read with Section 151 of Code of Civil Procedure, 1908, to receive the marriage invitation of the petitioner and mark the same as Ex.A4. The petitioner is the plaintiff and the respondents are defendants in the suit.

2. The plaintiff has filed the suit for partition and separate possession of the suit properties into four shares and allot one such share to her and also mesne profits. The suit was resisted by the defendant No.4 by filing written statement. Trial of the suit commenced and the plaintiff was examined as P.W.1 in chief and P.W.1 was partly cross-examined. At this stage, the plaintiff has filed an application to receive the marriage invitation and mark the same as Ex.A4 alleging that due to inadvertence, she omitted to file her marriage invitation to prove the date of marriage. She pleaded that only when she was cross-examined by the fourth respondent, she realized her mistake. Therefore, the plaintiff has filed application to receive the document (marriage invitation) and mark the same as Ex.A4.

3. Resisting the said application, the fourth respondent has

filed the counter contending that after a prolonged delay by the plaintiff, she was cross-examined in part on 13.7.2011 and thereafter, the plaintiff did not co-operate for cross-examination and finally the matter was adjourned to 28.11.2011 for her cross-examination. At that stage, the plaintiff has come up with an application to receive the marriage invitation and mark the same as Ex.A4. According to the fourth respondent, the petitioner has been callously negligent in prosecuting the proceedings. The marriage invitation sought to be marked was created for the purpose of the suit. The marriage invitation is secondary evidence and the same is inadmissible. Unless primary evidence is filed, the secondary evidence of marriage invitation cannot be received in evidence and prayed for dismissal of the application.

4. Upon consideration of the submissions of both sides, the trial Court dismissed the application holding that the marriage invitation sought to be received was created for the purpose of the suit, as alleged by the fourth defendant. Aggrieved by the same, the plaintiff has filed the present revision.

5. Heard Mr.N.Suresh, learned counsel appearing for the

petitioner. Respondent Nos.1 to 3 were given up in the revision. No representation on behalf of the fourth respondent.

6. Learned counsel for the petitioner submits that the trial Court ought not to have gone into the merits of the document and failed to exercise its jurisdiction vested in it under law. He further submitted that the trial Court ought to have noted that in order to prove the factum of the marriage of the petitioner, she had filed the documentary evidence in the nature of invitation and as such the same cannot be commented upon at the stage of receiving the document.

7. On a perusal of the plaint, it is seen that the plaintiff has filed the suit for partition and separate possession of the suit properties into four shares and to allot one such share to her and also past and future mesne profits. The plaintiff is the daughter of the first defendant. Defendants 2 and 3 are brothers of the plaintiff and they constitute a joint Hindu family. In the plaint, it is averred that the first defendant sold the properties to the fourth defendant and spent all the monies for his personal use. According to the plaintiff, she is entitled to one-fourth share in the suit properties as per the Hindu Succession Act Tamil Nadu Amendment Act 1/1990, which came into force from

25.3.1989. In her plaint, the plaintiff states that she was married during the year 1982 and as such she is entitled to one-fourth share in the suit properties.

8. Denying the averments in the plaint, the fourth defendant, who is alone contesting the suit, has filed the written statement. In paragraph 5 of the written statement, the fourth respondent stated that the plaintiff has not filed any documentary proof to show or prove the date, month and year of her marriage.

9. It is seen from the order under revision, the suit was taken up for trial and the plaintiff was examined in chief by way of proof affidavit on 20.12.2010 and after getting the matter adjourned for quite some time, on 13.7.2011, P.W.1 was cross-examined in part and thereafter on 12.8.2011, 22.8.2011 and 29.8.2011 respectively and the cross-examination was not completed. According to the fourth respondent, in the plaint itself it has been mentioned that the marriage of the petitioner was solemnized in 1982, but in the marriage invitation which is sought to be marked, it has been mentioned as 7.9.1994, which creates doubt over the credibility of the same.

10. As rightly pointed out by the learned counsel for the petitioner, in order to prove the marriage, the petitioner has filed the documentary evidence in the form of marriage invitation. The veracity of the marriage invitation cannot be decided at the interlocutory stage. Further, in the written statement itself the fourth defendant stated that the plaintiff has not filed any documentary proof to show or prove the date, month and year of her marriage.

11. Mere receiving the document would not affect the right of the other party to disprove the document sought to be received. The documents filed and marked in a case have to be proved and the burden of proof lies on the person who is marking the document. The fourth defendant is entitled to disprove the marriage invitation in question sought to be received in evidence. The alleged concoction of the document pleaded by the fourth respondent before the trial Court is not supported by any proof. The reasons given by the trial Court in dismissing the application are not correct and unsustainable in law. In the interest of justice, the application filed by the plaintiff to receive the document is liable to be allowed. No prejudice or hardship would be caused if the application to receive the document is allowed.

12. In fine, the impugned order dated 10.2.2012 passed in I.A.No.591 of 20011 in O.S.No.66 of 2009 on the file of the Principal Sub Judge, Villupuram, is set aside and the Civil Revision Petition is allowed. It is made clear that both parties shall co-operate for early disposal of the suit and the trial Court is directed to dispose of the suit expeditiously. It is also made clear that observations, if any, in this order, touching upon the merits of the suit, will not prevent the trial Court in deciding the issues involved in the suit on its own merits. No costs. Consequently, M.P.No.1 of 2012 is closed.

02.01.2017

Note: Issue order copy on 02.01.2018
vs

Index : Yes
Internet : Yes

To

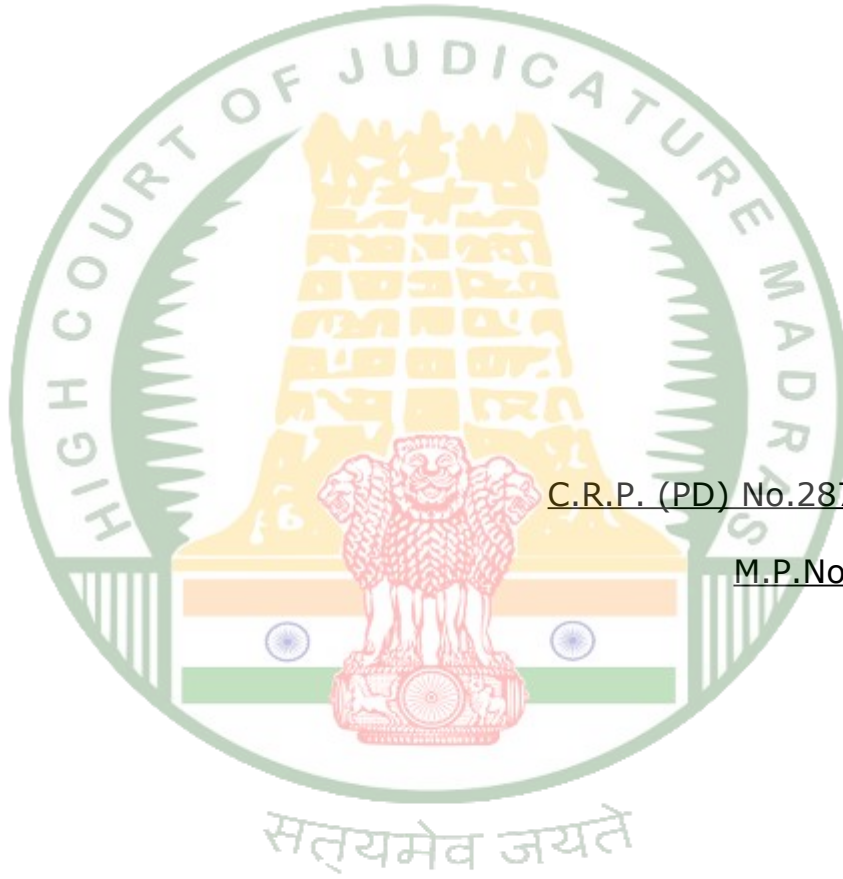
The Principal Sub Judge, Villupuram.

Office to note :-

Send order copy (along with records, if any)
to the trial Court, forthwith.

M.V.MURALIDARAN, J.

VS



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